

Balakrishnan P. vs the State of Kerala

Balakrishnan P. vs the State of Kerala

SooperKanoon Citation : sooperkanoon.com/1685328

Court : Kerala

Decided On : Jan-19-2021

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : WP(C)/23323/2018

Appellant : Balakrishnan P.

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
TUESDAY, THE 19TH DAY OF JANUARY 2021 / 29TH POUSHA, 1942
WP(C).No.23323 OF 2018(M) PETITIONER: BALAKRISHNAN P. AGED
57 YEARS, S/O LATE BALAKRISHNA MENON,RESIDING AT
PALAPPATTA HOUSE, P.O CHOORAKODE, VIA
VALLAPPUZHA,PALAKKAD DISTRICT- 679336. BY ADVS. SRI.RAJAN
VISHNURAJ SRI.V.HARISH RESPONDENTS:

1 THE STATE OF KERALA REPRESENTED BY ITS SECRETARY,
DEPARTEMTN OF ENVIRONMENT, SECRETARIAT,
THIRUVANANTHAPURAM- 695001. 2 THE DIRECTOR OF MINING

AND GEOLOGY DIRECTORATE OF MINING AND
GEOLOGY,KESAVADASAPURAM, PATTOM P.O,
THIRUVANANTHAPURAM-695004 3 THE DISTRICT COLLECTOR
PALAKKAD DISTRICT,CIVIL STATION, PALAKKAD-678001 4 THE
GEOLOGIST DISTRICT OFFICE, DEPARTMENT OF MINING AND
GEOLOGY,PALAKKAD-678001 5 ENVIRONMENTAL ENGINEER
KERALA STATE POLLUTION CONTROL BOARD,DISTRICT OFFICE,
PALAKKAD-678001 6 MS J P CONSTRUCTIONS AND J P GRANITES
CHORAKKODE P.O, PATTAMBI,PALAKKAD DISTRICT-
679336,REPRESENTED BY ITS MANAGING PARTNER R5 BY ADV.
SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL BOARD,

W.P.(C)No.23323 of 2018 2 R6 BY ADV. SRI.SANTHOSH MATHEW R6
BY ADV. SRI.ARUN THOMAS R6 BY ADV. SRI.JENNIS STEPHEN R6
BY ADV. SRI.VIJAY V. PAUL R6 BY ADV. SMT.KARTHIKA MARIA R6
BY ADV. SMT.VEENA RAVEENDRAN R6 BY ADV. SRI.ANIL
SEBASTIAN PULICKEL R6 BY ADV. SMT.DIVYA SARA GEORGE R6
BY ADV. SMT.JAISY ELZA JOE SRI S.KANNAN- GOVERNMENT
PLEADER . THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 1901-2021, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING: W.P.(C)No.23323 of 2018 3

JUDGMENT CR

The petitioner, who is stated to be the owner of 10 cents of

land in Sy.No.72/1 of Vallapuzha Village in Pattambi Taluk and residing there along with his family, has filed this writ petition under Article 226 of the Constitution of India, seeking a declaration that the approval granted by the 4th respondent Geologist, Palakkad on 31.07.2017 to Ext.P3 mining plan dated 17.04.2017 submitted by the 6th respondent, namely, M/s.J&P Constructions and J&P Granites, Choorakode, in respect of 01.6190 hectares of land in Survey Nos.75 and 78/2 in Block No.34 of Vallapuzha Village, for extracting granite building stone for the period from 04.12.2015 to 28.05.2019 (4.7 years) with year wise production

of 1,47,812.5 MT for the 1 st, 2nd, 3rd and 4th years and 22,250 MT for the remaining period of 7 months, is in contravention with the permissible limits and conditions in Ext.P1

order dated 15.11.2011 issued by the 2 nd respondent Director of

Mining and Geology granting quarrying lease to quarry granite building stone from the aforesaid property, for a period of 10 years from the date of execution of the quarrying lease, under W.P.(C)No.23323 of 2018 4

the Kerala Minor Mineral Concession Rules, 1967, in which the production of granite building stones from the area under lease is restricted to 24,000 MT per year during the tenure of the quarrying lease. The petitioner has also sought for a declaration that the 6th respondent is not entitled to conduct further mining activities in the aforesaid land, on the basis of Ext.P1 order dated 15.11.2011 of the 2nd respondent Director of Mining and Geology and Ext.P2 quarrying lease dated 30.11.2011 entered into between the State Government and the 6th respondent; a declaration that the 6th respondent is a violator of Environmental Impact Assessment Notification, 2006 and is not entitled for ex post facto Environmental Clearance for his mining project in the aforesaid property; a writ of certiorari to quash Ext.P3 mining plan dated 17.04.2017 approved by the 4th respondent Geologist; a writ of mandamus commanding the 1 st respondent State and the 2nd respondent Director of Mining and Geology to cancel Ext.P1 order dated 15.11.2011 and Ext.P2 quarrying lease dated 30.11.2011; a writ of mandamus commanding the 2nd respondent Director of Mining and Geology, the 3 rd respondent District

W.P.(C)No.23323 of 2018 5

Collector and the 4th respondent Geologist to impose 100% of the price of illegally mined mineral as penalty on the 6 th respondent for illegal mining; a writ of mandamus commanding the 5th respondent Environmental Engineer of the Kerala State Pollution Control Board, District Office, Palakkad to take penal action against the 6th respondent for violating the provisions of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974.

2. On 12.07.2018, when this writ petition came up for

admission, this Court admitted the matter on file and the learned Government Pleader took notice for respondents 1 to 4. Notice by speed post was ordered to 5th respondent, returnable within two weeks and notice by special messenger was ordered to the 6 th respondent.

3. On 14.11.2018, when the writ petition came up for

consideration, the learned Government Pleader and also the learned counsel appearing for the respondents 5 and 6 sought time for filing counter affidavit. This Court directed the 4 th respondent District Geologist to conduct inspection in the W.P.(C)No.23323 of 2018 6 leasehold property held by the 6 th respondent and submit a report before this Court, within a month, as to whether any violation is made to Ext.P1 lease area or any other modified lease.

4. On 04.12.2018, the 2nd respondent has filed counter

affidavit opposing the reliefs sought for in this writ petition. On 07.12.2018, the 4th respondent has filed an affidavit in terms of the order of this Court dated 14.11.2018, after conducting site inspection on 29.11.2018, in the quarrying lease area of 1.6190 hectares of land comprised in Re.Sy.Nos.75 and 78/2 in Block No.34 of Vallappuzha Village, owned by the 6th respondent.

5. On 09.01.2019, the 6th respondent has filed a counter affidavit opposing the reliefs sought for in this writ petition.

6. On 24.05.2019, when this writ petition came up for

consideration, this Court passed an interim order restraining the 6th respondent from carrying out any mining operation in Survey Nos.75 and 78/2 in Block No.34 of Vallappuzha Village in Ottappalam Taluk for a period of one month. The said interim

order reads thus;

W.P.(C)No.23323 of 2018 7

In terms of the order of this Court dated 14.11.2018, the 4th respondent has filed an affidavit dated 06.12.2018. Paragraph 9 of the said affidavit reads thus; 9. As on 05.12.2018, the production of granite building stone in the quarrying lease area for the financial year 2018-19 is 60326 metric tonnes which is within the lease.

2. The learned counsel for the petitioner would point out

clause 8 of Ext.P1 order dated 15.11.2011 of the 2 nd respondent granting quarrying lease to the 6 th respondent, which reads thus; 8. The production of Granite Building Stone from the area covered under this grant shall be restricted to 24,000 MT (Twenty four thousand only) per year during the tenure of this quarrying lease.

3. During the course of arguments, the learned counsel for

the 6th respondent could not point out any order, whereby clause 8 of Ext.P1 order stands modified so as to enable the said respondent to extract 60,326 metric tonnes of Granite Building Stone during the year 2018-19.

4. In such circumstances, there will be an interim order

restraining the 6th respondent from carrying out any mining operation in Survey No.75 & 78/2 in Block No.34 of Vallappuzha Village in Ottappalam Taluk, for a period of one month.

5. The learned Government Pleader shall ensure that an additional affidavit of the 4th respondent is placed on record, W.P.(C)No.23323 of 2018 8 explaining the facts and circumstances with reference to the quantity mentioned in paragraph 9 of the affidavit dated 06.12.2018 filed by the said respondent.

7. The aforesaid order dated 24.0.2019 was under

challenge in W.A.No.1585 of 2019 filed before the Division Bench. By the judgment dated 17.07.2019 that writ appeal was dismissed as not pressed, based

on the submission made by the learned counsel for the appellant/6th respondent that the appellant would like to withdraw the appeal without prejudice to his right to pursue W.P.(C)No.23323 of 2018. Therefore, the Division Bench dismissed the writ appeal as not pressed reserving the liberty as aforesaid.

8. Pursuant to the direction contained in the order of this Court dated 24.05.2019, the 4th respondent has filed an affidavit

dated 29.05.2019 producing therewith Ext.R4(d) annual production stock report downloaded from the official website and countersigned by the 6th respondent, for the financial year 2018- 2019, commencing from 11.06.2018; Ext.R4(e) annual production stock report downloaded from the official website and countersigned by the 6th respondent for the period from W.P.(C)No.23323 of 2018 9 01.04.2019 to 25.05.2019; and Ext.R4(f) relevant extract of the revised approved mining plan. The interim order granted on 24.05.2019, which was extended on 21.06.2019, 03.07.2019 and 02.08.2019, was extended until further orders on 30.09.2019.

9. On 06.01.2020, the 6th respondent has filed an

additional affidavit dated 29.12.2019 producing therewith additional documents. The 6th respondent has also filed I.A.No.1 of 2020 seeking an order to vacate the interim order dated 24.05.2019.

10. On 24.01.2020, when this writ petition came up for

consideration, this Court adjourned the matter to 13.02.2020 and directed the petitioner to file reply affidavit. It was ordered that the interim order will continue till then. Thereafter, the said interim order was extended for a period of three months on 04.03.2020. On 18.02.2020, the petitioner has filed reply affidavit to the counter affidavit filed by the 6 th respondent. On 22.06.2020, the petitioner filed reply affidavit to the counter affidavit filed by respondents 2 and 4.

11. Heard the learned counsel for the petitioner, the W.P.(C)No.23323 of 2018 10

learned Government Pleader appearing for respondents 1 to 4, the learned Standing Counsel appearing for the 5 th respondent and also the learned counsel

for the 6th respondent.

12. The main relief sought for in this writ petition is a

declaration that the approval granted by the 4th respondent Geologist on 31.07.2017 to Ext.P3 mining plan dated 17.04.2017 submitted by the 6th respondent, in contravention with the

permissible limits and conditions in Ext.P1 order dated 15.11.2021 issued by the 2nd respondent Director of Mining and Geology is illegal and without any authority. Therefore, the petitioner is seeking a declaration that the approval of Ext.P3 mining plan dated 17.04.2017 submitted by the 6th respondent, in respect of 01.6190 hectares of land in Survey Nos.75 and 78/2 in Block No.34 of Vallapuzha Village, for extracting granite building stone for the period from 04.12.2015 to 28.05.2019 (4.7 years) with year wise production of 1,47,812.5 MT for the 1st, 2nd, 3rd and 4th years and 22,250 MT for the remaining period of 7 months, is in contravention with the permissible limits and conditions in Ext.P1 order dated 15.11.2011 issued by the 2nd

W.P.(C)No.23323 of 2018 11

respondent Director of Mining and Geology for quarrying granite building stone from the aforesaid property, for a period of 10 years from the date of execution of the quarrying lease, under the provisions of the Kerala Minor Mineral Concession Rules, 1967, in which the production of granite building stone from the area under that lease is restricted to 24,000 MT per year during the tenure of the quarrying lease.

13. The 2nd respondent Director of Mining and Geology, by

Ext.P1 proceedings dated 15.11.2011, granted quarrying lease in favour of the 6th respondent for extracting granite building stones from land having an extent of 1.6190 hectares, comprised in Re.Sy.Nos.75 and 78/2 in Block No. 34 of Vallapuzha Village in

Ottapalam Taluk in Palakkad District. As per Ext.P1, the production of the mineral shall be restricted to 24,000 MT per year, during tenure of quarrying lease. It was contemplated in Ext.P1 that the terms and conditions contained therein are subject to such modifications, as may be made by the State Government from time to time.

14. As evident from Ext.P1 order dated 15.11.2011, the W.P.(C)No.23323 of 2018
12

6th respondent submitted an application dated 16.02.2011 seeking quarrying lease to quarry granite building stone from 1.6190 hectares of land comprised in Re.Sy.No.75 and 78/2 in Block No.34 of Vallappuzha Village in Ottappalam Taluk. The said property is owned by the 6th respondent. Based on that application, the 2nd respondent Director of Mining and Geology issued Ext.P1 order dated 15.11.2011 granting quarrying lease to the 6th respondent to quarry granite building stone, for a period of 10 years from the date of execution of the quarrying lease, under the provisions of the Kerala Minor Mineral Concession Rules, 1967 and as per the survey map and no-objection certificate issued by the Tahsildar, Ottappalam. As stated in Ext.P1 order, the 2nd respondent granted quarrying lease to the

6th respondent subject to the conditions stipulated in that order

regarding payment of royalty as per Rule 29(1)(c) of the said Rules; payment of dead rent under Rule 29(1)(d); payment of surface rent under Rule 29(1)(e), etc. As per condition No.8 of Ext.P1, the production of granite building stone from the area covered under that grant shall be restricted to 24,000 MT per W.P.(C)No.23323 of 2018 13 year during the tenure of the quarrying lease. In Ext.P1, it is

provided that the terms and conditions contained in that order

are subject to such further modifications as may be made by the State Government from time to time.

15. On the strength of Ext.P1 order, the 6th respondent

executed Ext.P2 quarrying lease dated 30.11.2011 with the State Government, for a period of 10 years, from 30.11.2011, to 29.11.2021, for the purpose of extracting minor minerals from the property having an extent of 1.6190 hectares, subject to the terms and conditions contained in the Kerala Minor Mineral Concession Rules and also that contained in Ext.P2. Ext.P2 quarrying lease is one executed in Form H, as per the requirements of Rule 32, Chapter V of the Kerala Minor Mineral Concession Rules, 1967. The internal pages 2 and 3 of Ext.P2 are missing in the writ petition. Along with the counter affidavit filed by the 6th respondent, a full set of the quarrying lease dated 30.11.2011 is placed on record as Ext.R6. As per the terms and conditions of the quarrying lease (condition No.1), the 6th respondent, who is the lessee, shall have the right in and upon

W.P.(C)No.23323 of 2018 14

the land measuring 1.6190 hectares described in the Schedule to extract granite building stone and to do all acts necessary for the extraction of the said mineral including the erection on the said land, buildings and plant required for the purposes and also to take lead and carry away over the said land and to dispose of the said minerals extracted as aforesaid. As per condition No.4, the lessee shall at all time during the currency of the lease keep correct and intelligible books of account showing accurately the quantity of the said minerals extracted and the weight and value of the said mineral sold or exported together with the names of the purchasers or consignees. As per condition No.17, the lease is subject to all rules and regulations which may from time to time be issued by the State Government regulating the working of the quarries and other matters affecting the safety, health and convenience of the lessee's employees or of the public, whether under the Indian Mines Act or otherwise. As per condition No.21, any condition prescribed in the Kerala Minor Mineral Concession Rules, 1967, but left out in the lease which may be found applicable to the lessee shall be treated as binding on the lessee.

W.P.(C)No.23323 of 2018 15 The anticipated royalty for the mineral at the rate of Rs.16/- per tonne for a period of one year is shown as Rs.3,84,000/- in clause 21

of Ext.P2 quarrying lease, which is for a quantity of 24,000 MT fixed in Ext.P1 order dated 15.11.2011 ($24,000 \times 16 = 3,84,000$).

16. The Kerala Minor Mineral Concession Rules,

1967:- The 1st respondent State made the Kerala Minor Mineral Concession Rules, 1967 (for brevity, the Rules of 1967), in exercise of the powers conferred by sub-section (1) of section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, for regulating the extraction of minor minerals in the State of Kerala. Clause (v) of Rule 3 define quarrying permit to mean a permit granted under Chapter II of these rules to extract and remove any minor mineral in specified quantities and within a specified time. Clause (vi) of Rule 3 define quarrying lease to mean a mining lease for minor minerals.

16.1. Chapter V of the Rules of 1967 deals with grant of quarrying leases in respect of lands in which the minerals vest in the Government. Rule 15 deals with applicability of the chapter. W.P.(C)No.23323 of 2018 16

As per Rule 15, the provisions of this chapter shall apply only to the grant of quarrying leases in respect of lands in which the minor minerals vest exclusively in the state Government. Rule 17 deals with payment and rate of royalty. As per sub-rule (1) of Rule 17, the holder of a mining lease granted on or after the commencement of these rules shall pay royalty in respect of any mineral removed by him from the land in respect of which the lease has been granted at the rates specified in schedule I in respect of the mineral. As per sub-rule (1A) of Rule 17, the holder of quarrying lease for granite building stone may opt for the Consolidated Royalty Payment System as per Schedule V provided the leaseholder is not having metal crusher unit.

16.2. Rule 18 of the Rules of 1967 deals with application for

grant of quarrying lease and its renewal. As per sub-rule (1) of Rule 18, the application for the grant of quarrying lease or renewal of a quarrying lease shall be made to the competent authority in Form B. As per sub-rule (1A) of Rule 18, every application for grant of quarrying lease or renewal of quarrying lease in respect of

dimension stones as specified in the

W.P.(C)No.23323 of 2018 17 classification in Rule 8A shall be accompanied by a fee of Rs.10,000/-. 16.3. Rule 21 of the Rules of 1967 deals with disposal of

application for the grant and renewal of quarrying lease. As per sub-rule (1) of Rule 21, on receipt of an application for the grant or renewal of a quarrying lease the competent authority, on making such enquiries as is found necessary, may sanction the grant or renewal of quarrying lease to the applicant or refuse to sanction it. As per sub-rule (2) of Rule 21, an application for the grant of a quarrying lease shall be disposed of within six months from the date of its receipt. As per sub-rule (3) of Rule 21, an application for the renewal of a quarrying lease shall be disposed of within three months from the date of its receipt. As per sub-rule (4) of Rule 21, if any application is not disposed of within the period specified in sub-rule (2) or sub-rule (3), it shall be deemed to have been refused.

16.4. Rule 24 of the Rules of 1967 deals with length and breadth of area leased. As per Rule 24, except in case of a

quarrying lease for sand or Kankar, the length of an area held

W.P.(C)No.23323 of 2018 18

under a quarrying lease shall not exceed four times its breadth. As per the proviso to Rule 24, in case of bedded deposits, the length shall not be more than twice the breadth measured along the dip. Rule 25 of the Rules deals with boundaries below the surface. As per Rule 25, the boundaries of the area covered by a quarrying lease shall run vertically downwards below the surface towards the centre of the earth. Rule 26 deals with restriction on the area of quarrying lease. As per sub-rule (1) of Rule 26, the area granted under the quarrying lease shall be a contiguous unit. As per sub-rule (2) of Rule 26, no lessee shall ordinarily hold in the aggregate more than 2 sq.km. of area under lease in respect of one minor mineral within the State of Kerala.

16.5. Rule 27 of the Rules of 1967 deals with survey of the

area leased. As per Rule 27, in the case of unsurveyed lands and in cases where, the area is not bounded by the boundary or boundaries of existing survey numbers, arrangements shall be made at the expense of the lessee for the survey and demarcation of the area granted under the lease. In all other cases, copy of the survey map of the area attested by the local

W.P.(C)No.23323 of 2018 19

Revenue authority not below the rank of a Tahsildar or Assistant Director of the Department of Survey and Land Records shall be accepted as sufficient document to specify the area. Rule 28 of the Rules of 1967 deals with period of quarrying lease. As per sub-rule (1) of Rule 28, the period for which a quarrying lease may be granted for all minor minerals except for dimension stones shall not exceed 12 years except in the case of a

quarrying lease for ordinary clay granted to the cement manufacturers in which case the maximum period shall be 20 years. The quarrying lease may be renewed for one or two periods not exceeding the period for which the quarrying lease was originally granted. As per sub-rule (1A) of Rule 28, in respect of dimension stones as specified in item 3 of Schedule I of these rules, the period of lease shall not exceed 10 years. As per sub- rule (2) of Rule 28, when renewal is granted, dead rent, royalty and surface rent shall be charged at the rates in force at the time of renewal.

16.6. Rule 29 of the Rules of 1967 deals with conditions of quarrying lease. As per sub-rule (1) of Rule 29, every quarrying W.P.(C)No.23323 of 2018 20 lease shall be subject to the conditions enumerated in clauses (a) to (q) thereof, and such conditions shall be incorporated in every quarrying lease deed. Rule 29 reads thus; Rule 29. Conditions of quarrying lease.- (1) Every quarrying lease shall be subject to the following conditions, and such conditions shall be incorporated in every quarrying lease deed-

(a) The lessee shall report to the authority who has sanctioned the lease, the discovery in the leased area of any mineral not specified in the lease within 15 days of such discovery;

(b) If any mineral not specified in the lease is discovered in

the leased area, the lessee shall not win or dispose of such mineral unless a separate lease is obtained therefor under the relevant rules and if he fails to apply for such a lease within six months from the discovery of the mineral the State Government may grant a lease in respect of such mineral to any other person;

(c) The lessee shall pay to the State Government royalty on

any mineral moved out of the quarry hold at the rates specified in schedule I as may be fixed by the State Government from time to time. Provided that in the case of quarrying leaseholder those who opt for consolidated royalty payment system, need to remit the amount prescribed in the higher slab of the schedule V, i.e., Rs.7,00,000 per annum.

W.P.(C)No.23323 of 2018 21

(d) The lessee shall pay the State Government for every

year, except the first year of lease such yearly dead rent within the limits specified in schedule II, as may be fixed from time to time by the State Government. Where the lease permits the working of any mineral, the lessee shall be liable to pay dead rent or royalty in respect of that mineral, whichever be higher in amount but not both: Provided that where the lease permits the working of more than one mineral in the same area, the lessee shall be liable to pay dead rent or royalty in respect of each mineral subject to the restriction mentioned above in respect of any mineral: Provided further that where the quarrying of one mineral involves the quarrying of any other mineral or minerals and lease permits the working of such other mineral or minerals also the lessee shall be liable to pay dead rent for only one mineral the highest dead rent being payable for this purpose in lieu of the combined royalty, if the latter is less than the former.

(e) The lessee shall also pay to the State Government for

the surface area used by him for the purpose of mining operations surface rent at such rate as may be specified in the lease, but not exceeding the land revenue and cesses assessable on the land from time to time;

(f) The lessee shall not employ in connection with the

mining operations any person who is not an Indian W.P.(C)No.23323 of 2018 22 National Except with the previous approval of the State Government or the competent authority;

(g) Unless the State Government or the competent authority

for sufficient cause permit or permits otherwise the lessee shall commence mining operations within three months from the date of execution of the lease and shall thereafter conduct such operations in a proper, skilful and workman like manner. Explanation:- For the purpose of this clause mining operations shall include the erection of machinery, laying of a tramway or construction of a road in connection with the working of the mine;

(h) The lessee shall at his own expense erect and at all times maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation shown in the plan annexed to the lease.

(i) The lessee shall not carry on, or allow to be carried on

any mining operations at any point within a distance of 75 metres from any railway line, except under and in accordance with written permission of the railway administration or from any bridge on National Highway or 50 metres from any reservoir, tanks, canals, roads, bridges, other public works, residential buildings, the boundary walls of places of worship, burial grounds or burning ghats, except under and in accordance with the previous permission of the State Government or the competent authority.

The railway administration or the

W.P.(C)No.23323 of 2018 23 State Government or the competent authority may in granting such permission impose such conditions as may be found necessary. Provided that except in cases of sand no mining operations shall be carried on within 50 metres of any river bank.

(j) The lessee shall keep correct accounts showing the

quantity and other particulars of all minor minerals obtained from the mine, date-wise, quantities of despatches from the lease hold, the price obtained for such minerals, the name of the purchasers, the receipts for money received, the number of persons employed therein, and shall allow any officer authorised by the State Government or the competent authority in this behalf to examine at any time any accounts and records maintained by him and shall furnish the State Government or the competent authority with such information and returns as may be required.

(k) The lessee shall keep accurate records of all trenches

and pits made by him in the course of quarrying operations carried on by him under the lease, and shall allow any officer authorised by the State Government or the competent authority to inspect the same. Such records shall contain the following particulars namely:-

(i) The sub-soil and strata through which such trenches or pits or drilling pass;

(ii) any mineral encountered; W.P.(C)No.23323 of 2018 24

(iii) Such other particulars as the State Government or the competent authority may, from time to time, require;

(l) The lessee shall support and strengthen, to the

satisfaction of the railway administration concerned or the State Government or the competent authority, as the case may be, any part of the quarry which in its or their opinion requires such strengthening or support for the safety of any railway, reservoir, canal, road or any other public works or buildings;

(m) The lessee shall allow any officer authorised by the State

Government or the competent authority and the Central Government to enter upon any building, excavation or land comprised in the lease for the purpose of inspecting the same;

(n) The lessee shall give to:-

(i) to the Deputy Director General, Directorate General of Mines Safety, Southern Zone, Bengaluru - 560 029;

(ii) The Regional Controller of Mines, Yeshwantpur, Bengaluru - 560 022; and

(iii) The District Magistrate of the district in which the mine is situated; a notice in writing in form 'E' appended to these rules, as soon as:-

(a) the workings in the mine extent below superjacent ground; or
W.P.(C)No.23323 of 2018 25

(b) the depth of any open cast excavation measured from its highest to the lowest point reaches 6 metres; or

(c) the number of persons employed on any day is more than 50; or

(d) any explosives are used;

(o) the State Government or the competent authority shall

at all times have the right of pre-emption of the minor minerals won from the land in respect of which the lease has been granted; Provided that the fair market price prevailing at the time of pre-emption shall be paid to the lessee for all such minor minerals;

(p) the lessee shall:

(i) submit by the tenth day of every month, to the competent authority, a return in form F giving the total quantity of minor minerals raised in the preceding calendar month and its value;

(ii) furnish by the 15th April of every year to the

competent authority, a statement in form G giving information regarding quantity and value of minor minerals obtained during the last financial year, average number of labourers employed (men and women separately), number of accidents, compensation paid and number of days worked separately;
W.P.(C)No.23323 of 2018 26

(pp) The lessee shall be responsible for implementing the provisions of the various labour laws applicable, from time to time, to the quarry.

(ppp) the lessee shall not assign, sub-let or transfer his lease

or any right, title or interest therein to any person without the previous sanction in writing of the State Government or competent authority as provided in rule 34. (pppp) where any lease or any right, title or interest therein has been, assigned, sublet or transferred as provided in clause (ppp), then the person in whose favour such assignment, sublease or transfer has been made shall be responsible for implementing the provisions of the various labour laws applicable, from time to time, to the quarry;

(q) a quarrying lease may contain such other conditions as the State Government or the competent authority may deem necessary in regard to the following matter, namely: -

(i) the time limit, mode and place of payment of rents and royalties for this purpose minerals shall be moved from the quarry-hold only on permits issued by the competent authority on the basis of prepaid royalty;

- (ii) the compensation for damage to the land covered by the lease;
- (iii) the felling of trees; W.P.(C)No.23323 of 2018 27
- (iv) the restrictions of surface operations in any area prohibited by any authority;
- (v) the notice by lessee for surface occupation;
- (vi) the facilities to be given by the lessee for working other minor minerals in the leased area or adjacent areas;
- (vii) the entering and working in a reserved or protected forest; (viii) the securing of pits and shafts;
- (ix) the reporting of accidents;
- (x) the indemnity to the State Government against claim of third parties;
- (xi) the delivery of possession over lands and mines or the surrender, expiration or determination of the lease;
- (xii) the forfeiture of property left after determination of lease; (xiii) the power to take possession of plant, machinery, premises and mines in the event of war or emergency;
- (xiv) the provision of proper weighing machines.

(2)(a) If the lessee does not allow entry or inspection under clause (i) or (j) or (1) of sub rule (i), the State Government or the competent authority shall give notice in writing to the lessee requiring him to show cause within 30 days why the lease should not be determined and his security deposit forfeited, and if the lessee fails to show cause within the

W.P.(C)No.23323 of 2018 28 aforesaid period to the satisfaction of the State Government or the competent authority they or it may determine the lease and forfeit the whole or part of the security deposit.

(b) If the lessee makes any default in payment of dues to

the State Government or commits breach of any of the conditions other than those referred to in clause (a) the State Government or the competent authority shall issue notice to the lessee requiring him to pay the dues or remedy the breach, within 30 days from the date of receipt of the notice and if the payment is not made or the breach is not remedied within such period, the State Government or the competent authority may without prejudice to any proceeding that may be taken against him, require the lessee to pay a penalty not exceeding an amount equivalent to five times the annual dead rent.

(c) A quarrying lease may contain any other special conditions as may be specified by the State Government. 16.7. Rule 30 of the Rules of 1967 deals with rights of

lessee. As per Rule 30, subject to the conditions mentioned in rule 29 the lessee with respect to the land leased to him, shall have the right for the purpose of mining operations on that land

(a) to work the mines; (b) to sink pits and shafts and construct building and roads; (c) to erect plant and machinery; (d) to quarry and obtain buildings and road materials and make bricks, W.P.(C)No.23323 of 2018 29 but not for sale; (e) to use water and take timber; (f) to use land for stacking purposes; and (g) to do any other thing specified in the lease. 16.8. Rule 31 of the Rules of 1967 deals with security

deposit. As per sub-rule (1) of Rule 31, an applicant for quarrying lease shall, before the deed referred to in Rule 32 is executed, deposit as security a sum of one thousand rupees for all minor minerals except dimension stones only for the due observance of the terms and conditions of the lease. As per sub-rule (2) of Rule 31, in the case of dimension stones in Rule 8A the security deposit shall be Rs.10,000/- per hectare. The security amount shall be refundable on the expiry of period of lease after deducting penalties if any. As per sub-rule (3) of Rule 31, the

security deposit shall be remitted to the credit of the State

Government to the remittance head of account as the Government may by special order specify in this regard. 16.9. As per Rule 32 of the Rules of 1967, lease to be executed within three months. As per sub-rule (1) of Rule 32, where a quarrying lease is granted, a lease deed in Form H shall W.P.(C)No.23323 of 2018 30

be executed within three months of the order or within such further period as the State Government or the competent authority may allow in this behalf, and if no such lease deed is executed within the said period due to any default on the part of the applicant, the State Government or the competent authority may revoke the order granting the lease, and in that event the application fee shall be forfeited to the State Government. As per sub-rule (2) of Rule 32, the date of commencement of the period for which a quarrying lease is granted shall be the date on which the deed is executed under sub-rule (1).

16.10. Rule 33 of the Rules of 1967 deals with registration

of quarrying leases. As per Rule 33, all quarrying leases granted under this chapter shall be registered in accordance with the provisions of the Indian Registration Act, 1908. Rule 34 of the Rules of 1967 deals with transfer of quarrying lease. As per Rule 34, the lessee may with the previous sanction of the State Government or the competent authority assign, sublet or transfer his lease or any right title or interest therein to any person on payment of a fee of one hundred rupees to the State Government

W.P.(C)No.23323 of 2018 31

provided he has paid all the outstanding dues to Government. Rule 35 of the Rules of 1967 deals with rights to determine the lease. As per Rule 35, the lessee may determine the lease at any time by giving not less than six months notice in writing to the State Government or the competent authority after paying all outstanding dues to the State Government.

16.11. Chapter VI of the Rules of 1967 deals with procedure

for obtaining quarrying lease in respect of land the minor minerals in which vest in a person other than the State Government. Rule 38 of the Rules of 1967 deals with applicability of this chapter. As per Rule 38, the provisions of this chapter shall apply to the grant of quarrying leases in respect of lands, the minor minerals in which vest exclusively in a person other than the State Government. Rule 39 deals with grant of quarrying permit and restrictions thereto. As per Rule 39, on an application made to him in Form B, a private person in whom is vested the mineral right in the lands owned by him may grant a quarrying lease to any person subject to the restrictions specified below;

W.P.(C)No.23323 of 2018 32 (i) No quarrying lease shall be granted to any person unless he produces along with his application in Form B an Income Tax clearance certificate in Form 'C' from the Income Tax Officer.

(ii) No quarrying lease shall be granted to any person who is

not an Indian National. Provided that a quarrying lease may be granted to a person who is not an Indian National with the previous permission of the State Government. The State Government shall obtain the approval of the Central Government before granting and permission. 16.12. Rule 40 of the Rules of 1967 deals with conditions of

quarrying lease. As per Rule 40, every quarrying lease shall be subject to the following conditions, namely: (i) the provisions of clauses (b) to (p) of Rule 29 relating to conditions of quarrying lease shall apply to such leases with the modification that in clauses (c), (d) and (p) for the words "State Government", the word "lessor" shall be substituted and in clause (p) the words "competent authority" shall be omitted; (ii) the provisions of Rule 24 shall apply to such leases; (iii) the lease may contain such other conditions not being inconsistent with the provisions of the Act and these rules, as may be agreed upon between the parties;

W.P.(C)No.23323 of 2018 33

(iv) if the lessee makes any default in payment of royalty or

commits a breach of any of the conditions of the lease, the lessor shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within thirty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the lessor without prejudice to any proceeding that may be taken against the lessee determine the lease; and (v) the lessee may determine the lease at any time by giving not less than three months' notice in writing to the lessor.

16.13. Rule 41 of the Rules of 1967 deals with registration

of quarrying lease. As per Rule 41, all quarrying leases granted under this chapter shall be registered in accordance with the provisions of the Indian Registration Act, 1908. Rule 42 deals with submission of copy of quarrying lease order by the lessor. As per Rule 42, every lessor granting a quarrying lease shall, within one month of the grant of the lease, submit to the State Government or the competent authority a copy of the lease order. Rule 43 deals with submission of copy of the lease deed.

W.P.(C)No.23323 of 2018 34 As per Rule 43, the lessee obtaining a quarrying lease shall, within one month of the date of registration of the lease deed, submit to the State Government or the competent authority a registered copy of the lease deed. 16.14. Rule 44 of the Rules of 1967 deals with transfer of

assignment. As per Rule 44 no quarrying lease shall be transferred to a person unless he be an Indian National and holds an Income Tax Clearance Certificate in Form C from the Income Tax Officer concerned. Rule 45 deals with communication of transfer of assignment. As per Rule 45, every transferee or assignee of a quarrying lease shall within 30 days of such transfer on assignment inform the State Government or the competent authority of the transfer or assignment and submit to the State Government or the competent authority one registered copy of the agreement entered into in that regard.

16.15. Rule 46 of the Rules of 1967 deals with prohibition of working of quarries. As per Rule 46, if the State Government or the competent authority has reason to believe that the grant or transfer of quarrying lease is in contravention of any of the

provisions contained in this chapter, the State Government or the competent authority may, after giving the parties an opportunity to represent their views within a specified period, direct the parties concerned not to undertake any quarrying operations in the area to which the lease relates. Rule 47 deals with returns and statements. As per Rule 47, the holder of a quarrying lease shall furnish to the State Government or the competent authority such information and statements within such period as may be required by them on it, as the case may be.

16.16. Clause (ivA) of Rule 3 of the Rules of 1967 define

Consolidated Royalty Payment System (CRP System) to mean quarries of granite/laterite building stone opted for payment of consolidated royalty per annum at the rate specified in schedule V. Clause (ivB) of Rule 3 define Consolidated Royalty Payment System (CRP System) for Granite Dimension Stones to mean a mode of advance payment of consolidated royalty for extraction and removal of granite dimension stones specified in item 3 of Schedule I of these Rules by the lessees who possess quarrying leases for the extraction and removal of dimension stones at the

W.P.(C)No.23323 of 2018 36 rate specified in Schedule VI. 16.17. Chapter VIIB of the Rules of 1967 deals with consolidated royalty. Rule 48P of the Rules deals with payment of consolidated royalty. As per sub-rule (1) of Rule 48P,

notwithstanding anything contrary contained in any other provisions of these Rules, a holder of registered metal crusher unit for production of metals of various size from granite building stones, who is in possession of quarrying lease or permit, as the case may be, shall opt to pay consolidated royalty at the rates specified in Schedule IV instead of paying royalty at the rates specified in Schedule I. As per sub-rule (2) of Rule 48P, the consolidated royalty specified in schedule IV may be remitted in two half yearly instalments commencing from April and October respectively.

16.18. Rule 48Q of the Rules of 1967 deals with form and manner of applications for registered metal crusher unit. As per clause (a) of Rule 48Q, every application for registration of metal crusher unit shall be made to the competent authority or to the persons authorised in this behalf in Form R. As per clause (b) of W.P.(C)No.23323 of 2018 37

Rule 48Q, every such application shall be accompanied by,- (i) a treasury receipted chalan for the amount of fee at the rates shown in Schedule IV remitted under the relevant receipt head of the Department of Mining and Geology; (ii) a location map showing the exact location of the registered crusher unit (survey number and other details of the place on which such a depot is situated); (c) every application for renewal of registration shall be made at least one month before the date on which the license is due to expire, accompanied by a treasury receipted chalan for the fee at the rate shown in Schedule IV remitted under the relevant receipt head of the Department of Mining and Geology. The renewal of the registration shall be granted only to those of the crushers having a valid mineral concession such as quarrying lease or quarrying permit.

16.19. Rule 48R of the Rules of 1967 deals with form and particulars for the grant of registration of registered metal crusher unit. As per sub-rule (1) of Rule 48R, on receipt of an application for the grant of registration of a metal crusher unit or its renewal, the competent authority after making such enquiry W.P.(C)No.23323 of 2018 38 as it deems fit may grant or renew a registration in Form S or refuse to grant a registration. As per sub-rule (2) of Rule 48R, every registration issued under sub-rule (1) shall be subject to such conditions and restrictions as may be specified therein and to the provisions of the Act and the Rules. 16.20. Rule 48S of the Rules of 1967 deals with licensing -

grant or refusal to register metal crusher unit. As per Rule 48S, in granting or refusing license to a metal crusher unit under sub- rule (1) of rule 48R, the competent authority shall take into consideration the following matters, namely:- (i) the request for registration to a metal crusher unit owned by any co-operative society in the locality possessing valid mineral concession such as quarrying lease or permit; (ii) the number of registered metal crusher units in the area; and (iii) the

availability of granite building stones for crushing.

16.21. Chapter IV of the Rules of 1967 deals with miscellaneous provisions. Rule 62 deals with delegation of powers. As per Rule 62, the State Government or the competent authority with the previous sanction of the State Government W.P.(C)No.23323 of 2018 39 may, by notification in the Gazette, delegate all or any of the powers vested in them or it to any officer or class of officers under them or it, as the case may be.

17. In the instant case, pursuant to Ext.P1 order dated 15.11.2011 of the 2nd respondent Director of Mining and Geology

granting quarrying lease to the 6th respondent M/s.J&P Constructions and J&P Granite, Ext.P2 quarrying lease was executed on 30.11.2011, in Form H prescribed under Rule 32 of the Rules of 1967. As already noticed, Rule 32 falls under Chapter V of the Rules of 1967, which deals with grant of quarrying leases in respect of lands in which the minerals vest in

the Government. Rule 29 of the said Rules, extracted hereinbefore at para 16.6., deals with conditions of quarrying lease and as per sub-rule (1) of Rule 29, every quarrying lease shall be subject to the conditions enumerated in clauses (a) to

(q) thereof, and such conditions shall be incorporated in every

quarrying lease. Rule 31 provides for a security deposit before executing a lease deed in Form H, referred to in Rule 32, for the due observance of the terms and conditions of the lease. Chapter W.P.(C)No.23323 of 2018 40

VI of the Rules of 1967 deals with the procedure for obtaining quarrying lease in respect of land, the minor minerals in which vest in a person other than the State Government. Rule 39 deals with grant of quarrying permit and restrictions thereto and Rule 40 deals with conditions of quarrying lease. As per clause (i) of Rule 40, every quarrying lease shall be subject to the conditions enumerated in clauses (i) to (v) thereof. Clause (i) of Rule 40 provides that the provisions of clauses (b) to (p) of Rule 29 relating to conditions of quarrying lease shall apply to such leases with the modification that in clauses (c), (d) and (p) for the words "State

Government", the word "lessor" shall be substituted and in clause (p) the words "competent authority" shall be omitted. Clause (ii) of Rule 40 provides that the provisions of Rule 24 shall apply to such leases. Rule 24 deals with length and breadth of area leased.

18. As contemplated under Rule 32 of the Rules of 1967,

Ext.P2 quarrying lease was executed on 30.11.2011, in pursuance of Ext.P1 proceedings. As per Ext.P1, the permissible limit of extraction of mineral was 24,000 MT. Therefore, in Clause W.P.(C)No.23323 of 2018 41

21 of the Ext.P2 quarrying lease it is provided as follows; In this case anticipated royalty for the mineral at the rate of Rs.16/- per tonne for a period of one year is Rs. 3,84,000/-. In Clause 21 of Ext.P2 quarrying lease, the anticipated royalty was calculated as follows; $24,000 \text{ MT} \times 16 = \text{Rs.}3,84,000/-$. In Clause 17 of Ext.P2 lease deed it is provided as follows;

This lease is subject to all Rules and Regulations, which may from time to time be issued by the State Government regulating the working of the quarries and other matters affecting the safety, health and convenience of the lessees employees or of the public, whether under the Indian Mines Act or otherwise.

19. As per Rule 48P of the Rules of 1967, a quarry

lease/permit holder, who holds a registered metal crusher unit shall opt to pay consolidated royalty at the rates specified in Schedule IV, instead of Schedule I, attached to the said Rule. Accordingly, Ext.P2 lease was attached to the metal crusher owned by the 6th respondent, who was issued with Ext.R6(i) registration certificate for his metal crusher unit, as contemplated under Rule 48P of the said Rules.

W.P.(C)No.23323 of 2018 42

20. The Mines and Minerals (Development & Regulation)

Act 1957 empowers the State Governments to make rules in respect of minor minerals. The provisions of the Rules of 1967 made by the State Government do

not contemplate mining plan for the extraction of minor minerals. The mining plan is contemplated only for the extraction of major minerals as per the provisions of the Mines and Minerals (Development & Regulation) Act 1957. The proposals for the mining of major minerals undergo Environment Impact Assessment and Environmental Clearance Procedure, but due attention was not been given to

environmental aspects of mining of minor minerals. Environmental Impact Assessment Notification of 1994 did not apply to the mining of minor minerals. Noticing the said fact minor minerals were brought under the ambit of the Environmental Impact Assessment Notification of 2006, as per which mining of minerals with a lease area of 5 hectares and above require prior environmental clearance.

21. In *Deepak Kumar v. State of Haryana* [(2012) 4 SCC 629] the Apex Court directed all the States, Union W.P.(C)No.23323 of 2018 43 Territories, the Ministry of Environment and Forests (Mo EF) and the Ministry of Mines to give effect to the recommendations made

by Mo EF in its report of March 2010 and the model guidelines

framed by the Ministry of Mines, within a period of six months from the date of order and submit their compliance reports. The Central Government was directed to take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and Union Territories were directed to take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and

Regulation) Act, 1957 taking into consideration the recommendations of Mo EF in its Report of March 2010 and model

guidelines framed by the Ministry of Mines, Government of India.

The Apex Court ordered that, in the meanwhile, leases of minor mineral, including its renewal for an area of less than five hectares, be granted by the States/Union Territories only after getting environmental clearance from the Mo EF. Paragraphs

12 to 19 of the order read thus; W.P.(C)No.23323 of 2018 44

12. The Minister for (E&F) wrote DO letter dated 1 st June, 2010 to all the Chief Ministers of the States to examine the report and to issue necessary instructions for incorporating the recommendations made in the report in the Mineral Concession Rules for mining of minor minerals under Section 15 of Mines and Mineral (Development and Regulation) Act,

1957. Following are the key recommendations reiterated in the letter: "(1) Minimum size of mine lease should be 5 hector.

(2) Minimum period of mine lease should be 5 years.

(3) A cluster approach to mines should be taken in case of smaller mines leases operating currently.

(4) Mine plans should be made mandatory for minor minerals as well.

(5) A separate corpus should be created for reclamation and rehabilitation of mined out areas.

(6) Hydro-geological reports should be prepared for mining proposed below groundwater table.

(7) For river bed mining, leases should be granted stretch wise, depth may be restricted to 3m/water level, whichever is less, and safety zones should be worked out.

(8) The present classification of minerals into major and minor categories should be reW.P.(C)No.23323 of 2018 45 examined by the Ministry of Mines in consultation with the States."

13. The Ministry of Mines, Govt. of India sent a

communication No.296/7/2000/MRC dated 16.05.2011 called "Environmental aspects of quarrying and of minor minerals - Evolving of Model Guidelines" along with a draft model

guidelines calling for inputs before 30. 06. 2011. Draft rules

called Minor Minerals Conservation and Development Rules, 2010 were also put on the website. Further, it may be noted Section 15(1A)(i) of the Act specifies the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reasons of any quarrying or mining operations shall be made in the same area or in any other area once selected by the State Government, whether by way of reimbursement of the cost of rehabilitation or otherwise by the persons holding the quarrying or mining lease.

14. We are of the view that all State Governments/Union

Territories have to give due weight to the above mentioned recommendations of the Mo EF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

W.P.(C)No.23323 of 2018 46

15. Quarrying of river sand, it is true, is an important

economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. In- stream mining lowers the stream bottom of

rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

16. We are of the considered view that it is highly necessary

to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, Mo EF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.

W.P.(C)No.23323 of 2018 47

17. The State of Haryana and various other States have not

so far implemented the above recommendations of the Mo EF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, Mo EF and the Ministry of Mines to give effect to the recommendations made by Mo EF in its report of March 2010 and the model

guidelines framed by the Ministry of Mines, within a period of

six months from today and submit their compliance reports.

18. Central Government also should take steps to bring into

force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of Mo EF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the Mo EF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments.

19. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares W.P.(C)No.23323 of 2018 48 be granted by the States/Union Territories only after getting environmental clearance from the Mo EF.

22. The Kerala Minor Mineral Concession Rules,

2015:- In exercise of the powers conferred by sub-section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, the Government of Kerala made the Kerala Minor Mineral Concession Rules of 2015 (for brevity, the Rules of 2015) in supersession of the Kerala Minor Mineral Concession Rules, 1967, vide G.O.(P)No.16/2015/ID dated 07.02.2015, published in Kerala Gazette dated 07.02.2015. The Explanatory Note to the said notification reads thus;

Explanatory Note (This does not form part of the notification, but is intended to indicate its general purport.) The Kerala Minor Mineral

Concession Rules, 1967 were issued under notification No.15203/E2/63/ID dated 24 th November, 1967 and published as S.R.O. No. 364/67 in Part I of the Kerala Gazette No.49 dated 12th December, 1967. The Honourable Supreme Court has directed the State Governments to frame proper Rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 in accordance with the recommendations of the Ministry of Forest and Environment and also directed the State

W.P.(C)No.23323 of 2018 49

Government to grant leases of minor minerals after getting environmental clearance from the appropriate authority and approved mining plan. Further the existing rules contained provisions for storage and transportation of minerals. The Government have decided to omit the said provisions from the said rules and to issue separate rules for the same. In the above said circumstances Government have decided to issue the Kerala Minor Mineral Concession Rules, 2015 superseding the Kerala Minor Mineral Concession Rules, 1967 as per the directives issued by the Honourable Supreme Court. The notification is intended to achieve the above object. 22.1. Clause (ii) of Rule 2 of the Rules of 2015 defines

approved mining plan to mean a mining plan approved by the competent authority under these Rules. Clause (iii) of Rule 2 defines competent authority to mean the authority or officer appointed by the Government by notification in the Official Gazette to exercise the powers and perform the functions of the competent authority under these rules. Clause (iv) of Rule 2 defines Consolidated Royalty Payment System (CRP System) for Granite (building stones) and Laterite (building stones) to mean a mode of advance payment of consolidated royalty as per Schedule IV of these rules that can be opted by a quarrying

W.P.(C)No.23323 of 2018 50 permit holder for extraction of granite (building stones) and laterite (building stones) specified in item 5 of Schedule I. 22.2.

Clause (vii) of Rule 2 of the Rules of 2015 defines

environmental clearance to mean the environmental clearance issued under the Environment (Protection) Act, 1986 or the rules made thereunder. Clause (ix)(a) of Rule 2, inserted by Kerala Gazette notification dated 23.06.2017, defines minor mineral to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, ordinary earth and such other minerals declared as minor minerals by the Government of India. Clause (x) of Rule 2 defines movement permit to mean a permit issued in Form R of these Rules to a lessee who is in possession of all statutory licences required for the working of a quarry to remove minerals from the place of extraction after payment of royalty to Government and also includes a permit granted under Rule 107 of these Rules.

22.3. Clause (xv) of Rule 2 of the Rules of 2015 defines quarrying permit to mean a short term permit granted under Chapter II of these Rules for a period not exceeding one year at W.P.(C)No.23323 of 2018 51

a time to extract any minor mineral within a specified period from an area of such extent as specified in Schedule IV or in specified quantities within a specified period as sanctioned by the authorities concerned. Clause (xvi) of Rule 2 defines quarrying lease to mean a mining lease for minor minerals granted under these Rules for a period as specified in Rule 39. Clause (xviii) of Rule 2 defines registered metal crusher unit to mean a unit

engaged in the business of crushing granite stones into aggregates by means of mechanical devices that conform to specific jaw sizes and dimensions which has been registered with the Department of Mining and Geology and possessing valid quarrying lease. 22.4. Chapter II of the Rules of 2015 deals with grant to

quarrying permits in respect of lands in which minerals or mineral right belong to Government. Rule 3 deals with grant of quarrying permit. Rule 4 deals with application for quarrying permit; Rule 7 deals with payment of royalty; Rule 9 deals with disposal of application for quarrying permit; Rule 10 deals with conditions on which quarrying permit shall be granted; and Rule 12 deals with

W.P.(C)No.23323 of 2018 52 renewal of quarrying permit. 22.5. Rule 10 of the Rules of 2015 deals with conditions on which quarrying permit shall be granted. As per Rule 10, every quarrying permit, except for ordinary earth, under Rule 9 shall be granted subject to the conditions enumerated in clauses (a) to

(q) thereof. Rule 10 reads thus;

Rule 10: Conditions on which quarrying permit shall be granted.- Every quarrying permit, except for ordinary earth, under Rule 9 shall be granted subject to the following conditions, namely:- a. the depth of the pit below surface shall not exceed 6 metres except in the case of extraction of granite (building stones) and laterite (building stones): Provided that in the cases of quarries of granite (building stones) and laterite (building stones) where the depth of the pit exceeds 6 metres, the sides of open workings shall be sloped, stepped or benched or secured by the permit holder in such a manner so as to prevent slope failure. When an open working is worked in steps such steps shall be of sufficient breadth in relation to their height to secure safety. In an excavation in any hard and compact ground the sides shall be adequately benched, sloped or secured so as to prevent danger from fall of sides. No trees, loose stone or debris shall be allowed to remain within a distance of three

W.P.(C)No.23323 of 2018 53

metres from the edge or side of the excavation. No person shall undercut any face or side or cause to permit such under cutting so as to cause any overhanging: Provided further that in the case of granite and laterite building stone quarries, the permit holder shall give a notice in writing in Form-D to the Deputy Director General, Directorate General of Mines Safety, Southern Zone, Bengaluru - 560029; and the District Magistrate of the district when the depth of open cast excavation measured from its highest to the lowest point reaches 6 metres or when the number of persons employed on any day is more than 50 or when any explosives

are used for excavation; b. The maximum period for a quarrying permit shall be one year from the date of grant under Rule 9; c. the permit holder shall not extract and remove excess quantity of the mineral than permitted; d. the permit holder shall not extract minerals outside the area permitted for extraction; e. the permit holder shall furnish to the competent authority or the officer authorised by him in this regard a return in Form 'F' regarding the mineral quarried and removed from the area before 10th day of every calendar month after the month of grant of quarrying permit. The permit holder shall also allow inspection of the area by the competent authority or any officer authorised by him at any time and shall give satisfactory proof as to the quantity of the mineral quarried and removed;

W.P.(C)No.23323 of 2018 54

(f) the permit holder shall not carry on or allow to be carried

on any quarrying operations at or to any points within a distance of 100 metres from any railway line except with the previous written permission of the Railway Administration concerned and any bridge on National Highway or 50 metres from any reservoir, tanks, canals, rivers, bridges, other public works, residential buildings, the boundary walls of places of worship, burial grounds, burning ghats or village roads or one kilometre from the boundaries of National Park or Wildlife Sanctuaries except with the previous permission of the authorities concerned or the Government or the competent authority; Provided that the Railway Administration or the State Government or any other authority in this behalf may in granting such permission impose other such conditions as may be found proper and necessary; Provided further that in cases where explosives are used for quarrying, the permit holder shall not carry on or allowed to be carried on any quarrying operations at or to any points [within the distance as specified by the Kerala State Pollution Control Board, from time to time, for granting consent to operate such quarrying as approved by the Government] from any railway line, any bridge, reservoir, tanks,

residential buildings, monuments protected by Government, canals, rivers, public roads having vehicular traffic, other public works or the boundary walls of places of

W.P.(C)No.23323 of 2018 55

worship or 50 metres from any burial grounds or burning ghats or village roads or forest lands; g. The area granted under a quarrying permit shall be a contiguous unit; h. The permit holder shall not win and dispose of any type of mineral other than the mineral specified in his permit; i. (i) The permit holder shall erect a notice board in Malayalam at a prominent place with a minimum size of 1 metre X 1.5 metres in a metallic board near to the entrance of the quarry to the effect that it shall contain the name and address of the permit holder, mineral concession number and date, the mineral to be extracted, permit number and date and its date of expiry, quantity of extraction permitted (if applicable), area of extraction permitted, explosives used (if any), etc.;

(ii) The permit holder shall erect a warning board with

danger sign regarding operation of the quarry 100 metres away by the side of the road leading to it; j. The permit holder shall allow any officer authorised by the Central or the State Government in this behalf to enter upon any building, place of excavation or land comprised in the permit for the purpose of inspection of the same; k. The permit holder shall carry on the operations permitted in a fair, orderly, skillful and workman like manner and shall not cause any damage to life and property in nearby areas and also not cause any serious environmental hazard;

W.P.(C)No.23323 of 2018 56

l. The permit holder shall at all times during the term of the permit keep or cause to be kept correct and intelligible records of accounts which shall contain accurate entries showing from time to time the quantity of

mineral extracted and if sold, to whom sold, place, number of transit pass etc. and it shall be open for inspection by the competent authority in this regard, during all reasonable time; m. The permit holder shall give on demand any information pertaining to the quarrying as required by the competent authority under these rules; n. The permit holder shall not be eligible for refund of any amount paid by way of application fee, rent, royalty or tax as the case may be; o. The permit holder shall comply with all rules and regulations which may from time to time be issued relating to the working of the quarries and other matters affecting the safety, health and convenience of the permit holders, employees or of the public whether under the Mines Act, 1952 (Central Act 35 of 1952) or otherwise; p. The permit holder shall without delay send to the District Collector, Deputy Director General, Directorate General of Mines Safety, Bengaluru and the competent authority under these rules a report of any accident causing death or serious bodily injury or serious damage to property which may occur during the course of the quarrying operation; q. (i) In the case of granite and laterite (building stone) quarries where a pit has been formed as a result of any

W.P.(C)No.23323 of 2018 57 mining operation, the permit holder shall provide retention wall/barricade/fencing/compound wall surrounding the quarrying area in order to prevent accidents by falling of human beings, animals or vehicles or any other thing into the quarry;

(ii) The permit holder shall sufficiently fence and secure all pits that may be seen or made in the permitted area, whether abandoned or not;

(iii) The permit holder shall also provide all effective preventive measures for the safety of labourers as well as the public in general.

(iv) The permit holder shall carry out mining operations

only in accordance with the approved mining plan submitted by him for obtaining the quarrying permit. 22.6. Chapter III of the Rules of 2015 deals with grant of

quarrying permits in respect of lands in which mineral right vests with private persons. Rule 20 deals with grant of quarrying permit. As per Rule 20, on application made to him in Form A, a private person in whom is vested the mineral rights in the lands owned by him may grant a quarrying permit to any Indian National to extract and remove from a specified land any minor mineral not exceeding 10,000 tonnes in quantity under one

W.P.(C)No.23323 of 2018 58

permit under the same conditions as specified in Chapter II under which the competent authority or the officer authorised by him in that regard may grant a quarrying permit in respect of lands in which the minerals vest in Government. Rule 21 deals with duties of grantor and Rule 22 deals with prohibition of working of quarries. Rules 20 to 22 were omitted by the Notification S.R.O.No.391/2020 published in Kerala Gazette dated 12.06.2020.

22.7. Chapter V of the Rules of 2015 deals with grant of

quarrying leases in respect of lands in which the mineral or mineral right vests in Government. As per Rule 25, which deals with applicability of the chapter, the provisions of this chapter shall apply only to the grant of quarrying leases in respect of lands in which the minor minerals vest exclusively in the Government. Rule 26 deals with restrictions on the grant of quarrying leases. As per Rule 26, quarrying leases under this chapter shall be granted only to Indian Nationals. As per the proviso to Rule 26, a quarrying lease may be granted by the Government to a person who is not an Indian National with the

W.P.(C)No.23323 of 2018 59 previous approval of the Central Government. Rule 27 deals with application for grant of quarrying lease; Rule 30 deals with application for renewal of quarrying lease; Rule 31 deals with preferential right of certain persons; and Rule 32 deals with payment of royalty by a lessee. Rule 32 reads thus; Rule 32: Payment of royalty by a lessee.-

(1) The holder of a quarrying lease which is granted on or

after the commencement of these rules shall pay royalty in respect of any mineral removed by him from the land in respect of which the lease has been granted at the rates specified in Schedule I in respect of the mineral.

(2) The State Government may, by notification in the

Official Gazette, enhance or reduce the rate of royalty in respect of any minor mineral with effect from the date, as may be specified in such notification: Provided that the rate of royalty shall not be enhanced in respect of any mineral more than once during any period of three years.

22.8.By G.O.(P)No.05/2016/ID dated 04.03.2016 published

in Kerala Gazette dated 09.03.2016, sub-rule (1a) was inserted to Rule 32, which reads thus; (1a) In the case of holder of a quarrying lease who opted for payment of royalty under Consolidated Royalty Payment W.P.(C)No.23323 of 2018 60 System, he shall pay royalty for one year in advance at the rates specified in schedule III or V, as the case may be. 22.9.By G.O.(P)No.25/2017/ID dated 22.06.2017 published in Kerala Gazette dated 23.06.2017, sub-rule (3) of Rule 32 was inserted, which reads thus;

(3) In cases where extraction of minerals is from Revenue Puramboke lands or from lands possessed by other Government Departments or Local Self Governments, the person who extracts minerals from such lands shall be liable to pay compensation or value of minerals, as the case may be, to the department concerned for the quantity of such extraction, as fixed by such departments from time to time. 22.10. Rule 40 of the Rules of 2015 deals with conditions of

quarrying lease. As per sub-rule (1) of Rule 40, every quarrying lease shall be subject to the conditions enumerated in clauses (a) to (s) thereof and/or any other conditions that may be imposed by the competent authority and such conditions shall be incorporated in every quarrying lease deed. As per clause (c) of sub-rule (1) of Rule 40, the lessee shall pay to the Government royalty on any mineral moved out of the leasehold at the rates

specified in Schedule I or consolidated royalty at the rate specified in Schedule III in the case of Registered Metal Crusher Units, as may be fixed by the Government from time to time. As per sub-rule (2) of Rule 40, the lessee shall carry out the mining operations only in accordance with the approved mining plan submitted by him for obtaining the quarrying lease.

22.11. Rule 41 of the Rules of 2015 deals with rights of the lessee. Rule 41 reads thus; Rule 41: Rights of lessee.- Subject to the conditions mentioned in Rule 40, the lessee with respect to the land leased to him, shall have the right for the purpose of mining operations on that land-

- (a) to work the mines;
- (b) to sink pits and shafts and construct building and roads;
- (c) to erect plant and machinery;
- (d) to quarry and obtain buildings and road materials and to make bricks, but not for sale;
- (e) to use water;
- (f) to use land for stacking purposes;

(g) to do any other thing specified in the lease. 22.12. Chapter VI of the Rules of 2015 deals with mining plan. Rule 53 mandates mining plan as a pre-requisite for the grant of quarrying permit or quarrying lease. As per Rule 53, W.P.(C)No.23323 of 2018 62

except as provided for in the proviso to sub-rule (1) of Rule 9, no quarrying permit or lease shall be granted by the Government or the competent authority unless there is a mining plan duly approved by the competent authority. Rule 9 referred to in Rule 53 deals with disposal of application for the grant of quarrying permit. As per sub-rule (1) of Rule 9, 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 granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area. As per the proviso to sub-rule (1) of Rule 9, approved mining plan and environmental clearance shall not be insisted, for the issuance and renewal of permits in the case of laterite building stone.

22.13. As per Rule 54 of the Rules of 2015, mining plan to be prepared by a Recognised Qualified Person. As per sub-rule

(1) of Rule 54, no mining plan shall be approved unless it is prepared by a qualified person recognised in this behalf by the W.P.(C)No.23323 of 2018 63

Government or the Director of Mining and Geology or by any recognised person under Rule 22B of the Mineral Concession Rules, 1960. Rule 55 of the Rules deals with submission of mining plan and its approval. Rule 55 reads thus;

55. Submission of mining plan and its approval.- On receipt of the application for grant of quarrying permit or lease for undertaking quarrying operations the competent authority shall take decision regarding the precise area to be granted for the said purpose and communicate such decision to the applicant and on receipt of such communication, the applicant shall submit a mining plan for the approval and the said mining plan shall include,-

(i) (a) plan of the precise area showing the nature and

extent of the mineral deposit clearly showing the spot or spots where the excavation is to be done in the first five year in the case of quarrying lease; or for the entire period in the case of quarrying permit.

(b) a detailed cross-section and detailed plan of spots of excavation;

(c) a tentative scheme of quarrying for the second five year period of the quarrying lease;

(ii) the geological and lithological details of the precise area including mineral reserves; W.P.(C)No.23323 of 2018 64

(iii) the extent of manual quarrying or quarrying by the use of machinery and mechanical devices on the precise area;

(iv) a plan of the precise area, showing natural water

course, limits of reserved and other forest areas and density of trees, if any, assessment of impact of quarrying activity on forest, land surface and environment including air and water pollution, details of scheme for restoration of the area by afforestation, reclamation of land, use of pollution control devices and of such other measures as may be directed by the Government or competent authority from time to time;

(v) annual programme and plan for excavation of the precise area, from year to year, in the case of quarrying permit, or from year to year for five years, in the case of quarrying lease;

(vi) any other matter which the Government or the competent authority may require the applicant to provide in the mining plan. 22.14. Rule 56 of the Rules of 2015 deals with modification

of mining plan. As per sub-rule (1) of Rule 56, the competent authority may require the lessee to make such modifications in the mining plan submitted by him or impose such conditions by an order in writing if such modifications or imposition of W.P.(C)No.23323 of 2018 65

conditions are considered necessary in the light of the experience of operation of mining plan or in view of the change in the technological development. As per sub-rule (2) of Rule 5, a lessee desirous of seeking modifications in the approved mining plan as are considered expedient, in the interest of safe and scientific mining, conservation of minor minerals or for the protection of environment, shall apply to the competent authority for modification of the mining plan setting forth the intended modifications and explaining the reasons for the same. As per sub-

rule (3) of Rule 56, the competent authority may approve the modifications under sub-rule (2) or approve such alterations as it may consider expedient.

22.15. Rule 61 of the Rules of 2015 deals with responsibility of the lessee. As per sub-rule (1) of Rule 61, the owner or agent or manager of a quarry shall have the responsibility to ensure that the protective measures contained in the quarry closure plan have been carried out in accordance with the approved quarry closure plan or with such modifications as approved by the competent authority in this behalf under these Rules. As per subW.P.(C)No.23323 of 2018 66 rule (2) of Rule 61, the owner or agent or manager shall submit to the competent authority in this behalf a yearly report before 1st July of every year setting forth the extent of protective works carried out as envisaged in the approved quarry closure plan and if there is any deviation, reasons thereof. 22.16. Rule 66 of the Rules of 2015 mandates submission

of mining plan by the existing lessee. As per sub-rule (1) of Rule 66, where quarrying operations for minor minerals have been undertaken before the commencement of these rules without an approved mining plan, the holder of such lease shall submit a mining plan within a period of one year from the date of commencement of these rules, to the competent authority in this behalf. Rule 66 reads thus;

66. Mining plan to be submitted by the existing lessee.- (1) Where quarrying operations for minor minerals have been undertaken before the commencement of these rules without an approved mining plan, the holder of such lease shall submit a mining plan within a period of one year from the date of commencement of these rules, to the competent authority in this behalf.

W.P.(C)No.23323 of 2018 67

(2) If a lessee has not been able to submit the mining plan within the specified time for reasons beyond his control, he may apply for extension of time giving reasons to the competent authority in this behalf.

(3) The competent authority on receiving an application

made under sub-rule (2) may, on being satisfied that the reasons given under sub-rule (2) are genuine, extend the period for submission of the mining plan for a period which may not extend beyond one year from the date of commencement of these rules.

(4) The competent authority may approve the mining plan

submitted by the lessee under sub-rule (1) or require any modifications to be carried out in the mining plan and the lessee shall carry out such modifications and resubmit the modified mining plan for approval of the competent authority.

(5) The competent authority shall within ninety days from the

date of receipt of the mining plan or the modified mining plan convey its approval or disapproval to the applicant and in case of disapproval it shall also convey the reasons for disapproving the said mining plan or the modified mining plan.

(6) If no decision is conveyed within the period stipulated

under sub-rule (5) the mining plan or the modified mining plan shall be deemed to have been provisionally approved and such approval shall be subject to the final decision whenever communicated. W.P.(C)No.23323 of 2018 68

(7) The mining plan under sub-rule (1) shall be prepared by a

recognised qualified person. 22.17. By G.O.(P)No.25/2017/ID dated 22.06.2017 published in Kerala Gazette dated 23.06.2017, sub-rule (1) of Rule 66 was substituted as follows; (1) Where quarrying operations for minor minerals have been undertaken before 7th day of February, 2015 without an approved mining plan, the holder of such lease shall not be permitted to operate such quarry unless he submits a mining plan for the remaining period of lease to the competent authority in this behalf. By the said notification published in Kerala Gazette dated 23.06.2017, sub-rules (2) and 3 of Rule 66 were omitted. 22.18. Rule 67 of the Rules of 2015 deals with review of

mining plan. As per sub-rule (1) of Rule 67, every mining plan duly approved under these rules shall be valid for the entire duration of the lease. As per sub-rule (2) of Rule 67, the owner, agent, Mining Engineer or Manager of every quarry shall review the mining plan as prescribed under sub-rule (1) and submit a scheme of mining for the next five years of the lease to the competent authority for approval at least one hundred and

W.P.(C)No.23323 of 2018 69

twenty days before the expiry of the first five year period for which it was approved on the last occasion. As per sub-rule (3) of Rule 67, the competent authority shall convey its approval or refusal to the scheme of mining within ninety days of the date of its receipt. As per sub-rule (4) of Rule 67, if approval or refusal of the scheme of mining is not conveyed to the lessee within the stipulated period, the scheme of mining shall be deemed to have been provisionally approved and such approval shall be subject to final decision whenever communicated. As per sub-rule (5) of Rule 67, every scheme of mining submitted under these rules shall be prepared by a Recognised Qualified Person as stipulated under sub-rule (2) of Rule 54.

22.19. As per Rule 68 of the Rules of 2015, quarrying operations to be in accordance with mining plan. As per sub-rule

(1) of Rule 68, every lessee shall carry out quarrying operations in accordance with the approved mining plan with such conditions

as may be prescribed under these rules or with such modifications, if any, as permitted under these rules or the mining plan or the scheme approved under these rules, as the W.P.(C)No.23323 of 2018 70 case may be. As per sub-rule (2) of Rule 68, if the quarrying operations are not carried out in accordance with mining plan as

prescribed under these rules, the competent authority may order

suspension of all or any of the quarrying operations and permit continuance of only such operations as may be necessary to restore the conditions in the quarry as

envisaged under the said mining plan.

23. As per sub-rule (1) of Rule 40 of the Rules of 2015,

every quarrying lease shall be subject to the conditions enumerated in clauses (a) to (s) thereof and/or any other conditions that may be imposed by the competent authority and such other conditions shall be incorporated in every quarrying

lease deed. As per clause (c) of sub-rule (1) of Rule 40, the lessee has an option to pay to the Government royalty on any mineral moved out of the leasehold at the rates specified in Schedule I or consolidated royalty at the rates specified in Schedule III in the case of registered Metal Crusher Units. As per Rule 53 of the Rules of 2015, an approved mining plan is a prerequisite for grant of quarrying permit or quarrying lease. As

W.P.(C)No.23323 of 2018 71

per sub-rule (1) of Rule 66 where quarrying operations for minor minerals have been undertaken before 07.02.2015 without an approved mining plan, the holder of such lease shall submit a mining plan within a period of one year from the date of commencement of these Rules, to the competent authority in this behalf. As per sub-rule (1) of Rule 66, substituted by G.O. (P)No.25/2017/ID dated 22.06.2017, published in Kerala Gazette dated 23.06.2017, where quarrying operations for minor minerals have been undertaken before 7th day of February, 2015 without an approved mining plan, the holder of such lease shall not be permitted to operate such quarry unless he submits a mining plan for the remaining period of lease to the competent authority in this behalf.

24. A reading of the provisions under Rule 66 of the Rules

of 2015 makes it explicitly clear that the said provision mandates submission of mining plan by the holder of a quarrying lease granted under the provisions of the Rules of 1967, who had undertaken quarrying operations for minor minerals before 07.02.2015, to submit a mining plan for the remaining period of W.P.(C)No.23323 of 2018 72

lease to the competent authority. Such a person shall not be permitted to operate the quarry unless he submits a mining plan before the competent authority, for the remaining period of the lease. When the entitlement of a person to submit mining plan under Rule 66, before the competent authority, is on the strength of a quarrying lease granted under the provisions of the Rules of 1967 and that mining plan is for the purpose of undertaking quarrying operations for the remaining period of lease, the mining plan submitted by the existing lessee should be in conformity with the terms and conditions of the order of the

competent authority granting quarrying lease under the provisions of the Rules of 1967, and also that contained in the quarrying lease executed with the State Government, on the strength of that order. As per sub-rule (1) of Rule 68, every lessee shall carry out quarrying operations in accordance with the approved mining plan with such conditions as may be prescribed under these rules or with such modifications, if any, as permitted under these rules or the mining plan or the scheme approved under these rules, as the case may be. As per sub-rule (2) of

W.P.(C)No.23323 of 2018 73

Rule 68, the competent authority may order suspension of the quarrying operations, if such operations are not carried out in accordance with mining plan. A conjoint reading of the provisions under Rules 66 and 68 of the Rules of 2015 leads to an irresistible conclusion that the mining plan approved by the competent authority under Rule 66, for the remaining period of lease granted under the Rules of 1967, and also the quarrying operations undertaken by the lessee, shall be in accordance with the terms and conditions of the original grant of quarrying lease under the Rules of 1967 and also that contained in the quarrying lease executed with the State Government, in terms of the original grant.

25. In the instant case, as per condition No.8 of Ext.P1

order dated 15.11.2011 of the 2 nd respondent Director of Mining

and Geology, the quantity of minor mineral which can be extracted by the 6th respondent from the property in question is restricted to 24,000 MT per year. In

terms of Ext.P1 order, in Ext.P2 quarrying lease entered with the State Government, the anticipated royalty for the mineral at the rate of Rs.16/- per W.P.(C)No.23323 of 2018 74

tonne, for a period of one year, is calculated as Rs.3,84,000/- (24,000 x 16= 3,84,000/-). However, in the mining plan submitted by the 6th respondent before the 4th respondent Geologist the quantity of minor mineral which can be extracted from the property in question, is shown as 1,47,812.5 MT for the 1st, 2nd, 3rd and 4th years and 22,250 MT for the remaining period of 7 months. That mining plan was approved by the 4 th respondent Geologist, as per endorsement dated 31.07.2017 made on Ext.P3. Therefore, conclusion is irresistible that Ext.P3 mining plan approved by the 4th respondent Geologist, permitting the 6th respondent to extract granite building stone from the

property in question, for the period from 04.12.2015 to 28.05.2019, with year-wise production as 1,47,812.5 MT for the 1st, 2nd, 3rd and 4th years and 22,250 MT for the remaining period of 7 months, is in contravention with the terms and conditions in Ext.P1 order dated 15.11.2011 of the 2 nd respondent Director of Mining and Geology, in which the production of granite building stone from the area covered under the grant is restricted to 24,000 MT per year during the tenure of the quarrying lease, the

W.P.(C)No.23323 of 2018 75

terms and conditions of Ext.P2 quarrying lease and also Rule 66 of the Rules of 2015. In such circumstances, Ext.P3 mining plan approved by the 4th respondent Geologist to the extent of permitting year-wise production for the remaining period of the quarrying lease, i.e., from 04.12.2015 to 28.05.2019, in excess of 24,000 MT per year cannot be sustained in law.

26. The learned counsel for the 6th respondent and also

the learned Government Pleader appearing for the official respondents would contend that, in view of Ext.R4(f) revised mining plan approved by the 4th respondent Geologist, on 25.03.2019, the challenge made in this writ petition

against Ext.P3 mining plan approved on 31.07.2017 cannot be sustained. The document placed on record as Ext.R4(f) is a relevant extract of the revised mining plan approved by the 4th respondent.

27. As stated in the affidavit filed by the 4th respondent

dated 25.09.2019, pursuant to the order of this Court dated 24.05.2019, during the pendency of this writ petition, the 6th respondent submitted a revised mining plan restricting the lease area from 1.6190 Hectares to 1.0206 Hectares, which was W.P.(C)No.23323 of 2018 76

approved by the 4th respondent Geologist on 25.03.2019, in which the year-wise production of building stone is fixed as 80,611 MT, for a period of three years. In the said affidavit it is stated that pursuant to an inspection carried out from the office of the 4th respondent, the quarrying operations pertaining to the area covered by Ext.P1 order of the 2nd respondent Director of

Mining and Geology granting quarrying lease to the 6th respondent was reduced from 1.6109 hectares to 1.0206 hectares. Admittedly, on the strength of Ext.P3 mining plan approved by the 4th respondent Geologist, the 6th respondent extracted 1,47,812.5 MT granite building stone per year, far in excess of 24,000 MT per year prescribed in Ext.P1 order of the

2nd respondent granting quarrying lease and also Ext.P2 quarrying lease executed with the State Government. Therefore, even after the issuance of Ext.R4(f) revised mining plan, the challenge made in this writ petition against Ext.P3 mining plan approved by the 4th respondent on 31.07.2017 can be sustained, since the 6th respondent had admittedly extracted 1,47,812.5 MT granite building stone per year, for the period prior to Ext.R4(f)

W.P.(C)No.23323 of 2018 77 revised mining plan, as against 24,000 MT per year fixed in Ext.P1 order of grant. The contention to the contra raised by the learned counsel for the 6th respondent and also the learned Government Pleader appearing for the official respondents can only be rejected as untenable.

28. The learned counsel for the 6th respondent would

contend that the present writ petition is barred by the principles of res judicata, on account of the dismissal of O.S.No.160 of 2007 filed by one Venugopalan, the brother of the petitioner herein, before the Munsiff's Court, Pattambi, against the 6th respondent herein, in order to restrain him from conducting the quarry. That suit was filed as a representative suit. After full-fledged trial, the Munsiff's Court, Pattambi dismissed the same as per Ext.R4(g) judgment dated 22.08.2012. A.S.No.106 of 2012 filed before the Sub Court, Ottappalam ended in dismissal as per Ext.R6(h) judgment dated 21.01.2017, which has attained finality. The learned counsel for the 6th respondent would point out that the facts relating to the said original suit and the appeal have been suppressed in the present writ petition.

W.P.(C)No.23323 of 2018 78

29. On the other hand, the learned counsel for the

petitioner would contend that the main relief sought for in this writ petition is against Ext.P3 mining plan approved by the 4th respondent on 31.07.2017, permitting the 6th respondent to extract granite building stone from the property in question, far in excess of 24,000 MT per year fixed in Ext.P1 order of the 2nd respondent granting quarrying lease. The approval of Ext.P3 mining plan by the 4th respondent Geologist, on 31.07.2017, was not the subject matter of challenge in O.S.No.160 of 2007 or A.S.No.106 of 2012 and as such, the challenge made in this writ

petition against Ext.P3 mining plan approved by the 4th respondent is not hit by the principles of res judicata. Therefore, it cannot be said that the petitioner has suppressed material

facts from the notice of this Court.

30. Section 11 of the Code of Civil Procedure, 1908 lays down that, no court shall try any suit or issue in which the matter

directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, W.P.(C)No.23323 of 2018 79 litigating under the same title, in a

court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

31. In *Saroja v. Chinnusamy (Dead) by L.Rs.* [(2007)

8 SCC 329] the Apex Court, after examining the provisions under Section 11 of the Code of Civil Procedure, has enumerated the essential conditions to be satisfied in order to constitute *res judicata*. Paragraph 4 of that judgment reads thus; "4. ... After a careful reading of the provisions under Section 11 of the Code of Civil Procedure, it is discernible that in order to constitute *res judicata*, the following conditions must be satisfied:

- (i) There must be two suits - one former suit and the other subsequent suit;
- (ii) The court which decided the former suit must be competent to try the subsequent suit;
- (iii) The matter directly and substantially in issue must be the same either actually or constructively in both the suits.
- (iv) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit;
- (v) The parties to the suits or the parties under whom they W.P.(C)No.23323 of 2018 80 or any of them claim must be the same in both the suits;
- (vi) The parties in both the suits must have litigated under the same title." (underline supplied)

32. As per Section 141 of the Code of Civil Procedure, the

procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. But, going by the 'Explanation' to Section 141 of the Code, inserted by Section 45 of the Code of Civil Procedure (Amendment) Act, 1976, the expression

'proceedings' in Section 141 includes proceedings under Order

IX, but does not include any proceeding under Article 226 of the Constitution.

33. However, a Three-Judge Bench of the Apex Court in

G.K. Dudani v. S.D. Sharma [(1986) Supp. SCC 239] held

that, although by reason of the 'Explanation' which was inserted in Section 141 of the Code of Civil Procedure, by the Code of Civil Procedure (Amendment) Act, 1976, Section 11 of the Code does not in terms apply to any proceeding under Article 226 of the Constitution, the principle of res judicata does apply to all writ petitions under Article 226.

W.P.(C)No.23323 of 2018 81

34. Before a plea of res judicata can be sustained, either

in a proceedings under the Code of Civil Procedure or writ proceedings under Article 226 of the Constitution of India, the following conditions must be satisfied, i.e., (i) the parties to the suits/writ petitions (i.e., the former suit/writ petition and the subsequent suit/writ petition) or the parties under whom they or any of them claim must be the same in both the suits/writ petitions; (ii) the matter directly and substantially in issue must be the same either actually or constructively in both the suits/ writ petitions; (iii) and the matter directly and substantially in issue in the subsequent suit/writ petition must have been heard and finally decided by a court of competent jurisdiction in the former suit/writ petition.

35. O.S.No.160 of 2007 filed before the Munsiff's Court, Pattambi, a representative suit by the petitioner's brother seeking permanent prohibitory injunction against the 6th

respondent herein, ended in dismissal by Ext.R4(g) judgment

dated 22.08.2012. A.S.No.106 of 2012 filed before the Sub Court, Ottappalam also ended in dismissal by Ext.R6(h) W.P.(C)No.23323 of 2018 82

judgment dated 21.01.2017. It is thereafter that the 4th

respondent, on 31.07.2017, granted approval to Ext.P3 mining plan submitted by the 6th respondent, permitting the 6th respondent to extract granite building stone from the property in

question, far excess of 24,000 MT per year fixed in Ext.P1 order

of the 2nd respondent granting quarrying lease. Therefore, the challenge made in this writ petition against the approval granted by the 4th respondent to Ext.P3 mining plan submitted by the 6th respondent, on the ground that it is one issued in contravention of the terms and conditions of Ext.P1 order of the 2nd respondent granting quarrying lease and Ext.P2 quarrying lease executed with the State Government pursuant to that order of grant, were not even available to the petitioner or the plaintiff in O.S.No.160 of 2007, who filed that representative suit before the Munsiff's Court, Pattambi, till 31.07.2017. In such circumstances, it cannot be contended that the challenge made in this writ petition against the approval granted by the 4th respondent to Ext.P3 mining plan was the subject matter directly and substantially in issue, either actually or constructively, in O.S.No.160 of 2007 filed before the

W.P.(C)No.23323 of 2018 83 Munsiff's Court, Pattambi, and finally heard and decided by the said court in that original suit. The contention to the contra raised by the learned counsel for the 6th respondent can only be rejected as untenable.

36. In All Kerala River Protection Council, Aluva v.

State of Kerala and others [2015 (2) KHC 359] a Division Bench of this Court held that, after the judgment of the Apex Court in Deepak Kumar [(2012) 4 SCC 629] and the order of the Government of India, Ministry of Environment and Forests

(Mo EF) dated 18.05.2012 all mining operations required environmental clearance with regard to area less than 5 hectares for obtaining permit and thereafter, for renewal environmental clearance is required. The concept of valid permit as on 09.01.2015 under the proviso to Rule 12 of the Rules of 2015 has to be read accordingly. Mining operation is a wider term which shall include mining operation by any means, i.e., mining lease/quarrying lease/mining permit, etc. Notification

dated 14.09.2006 clearly covers mining operation by mining lease/

mining permit/quarrying permit. Government of India by order

W.P.(C)No.23323 of 2018 84 dated 18.05.2012 having made, obtaining prior environmental clearance mandatory for an area of less than 5 hectares the same shall apply to any kind of mining activity including a mining permit.

37. In All Kerala River Protection Council the Division

Bench noticed that in paragraph 27 of Deepak Kumar the Apex Court has directed all the States/Union Territories to give effect to the recommendations made by the Mo EF in its Report of March, 2010 and the model guidelines framed by the Ministry of Mines within a period of six months from that day and submit their compliance reports. Whereas, in paragraph 29, by the words in the meanwhile it clearly meant the situation till the State amends its Rules as per the directions issued in paragraph

27. The State made the Rules of 2015, which supersedes the

Rules of 1967. After referring to the provisions under Rules 9, 12, 20 and 33 of the Rules of 2015, the Division Bench observed that, now the State has specifically prescribed requirement of environmental clearance for grant of mining permit as well as mining lease/quarrying lease. The Rule having coming into force W.P.(C)No.23323 of 2018 85 from 07.02.2015 all subsequent acts by the State has to be conducted in accordance with the statutory Rules. Order of the Apex Court in Deepak Kumar which was issued as an interim measure has served its main purpose since requirement of obtaining environmental clearance has been engrafted in the Rules of 2015.

38. In All Kerala River Protection Council on the issue

relating to interpretation of Rule 68 of the Rules of 2015, which mandates that quarrying operations to be in accordance with mining plan, the Division Bench noticed that, Rule 68 forms part of Chapter VI which pertains to mining plan. As per Rule 9 and Rule 33, for grant of mining permit and grant of renewal of

quarrying lease, submission of approved mining plan is mandatory. However, with regard to existing lease holders a separate provision, i.e., Rule 66 is engrafted. Sub-rule (1) of Rule 66 grants one year time from the commencement of Rules for submission of mining plan where quarrying operations for minor minerals have been undertaken. As per sub-rule (2) of Rule 66 the said period can be further extended for a period of one year.

W.P.(C)No.23323 of 2018 86

Rule 68 provides that quarrying operations to be in accordance with mining plan. Rule 68 thus clearly meant carrying out of the mining operations in accordance with the mining plan. Rule 66 thus has to be read along with Rule 68 and Rule 66 engraft an exception to the general Rule 68 which required that every quarrying operation be in accordance with the mining plan. If it is

held that Rule 68 is to override any other rule of the Rules of

2015 pertaining to mining plan, the same shall not be in accordance with the intend and content of Rule 68. The Division Bench was of the view of that Rule 66 and Rule 68 have to be read together and Rule 66 is a category exempted from the mandatory requirement as provided in Rule 68. The Division Bench observed that the Rules of 2015 have been framed keeping in view of the observations made by the Apex Court in Deepak Kumar and there being no challenge to the 2015 Rules, all the parties have to act in accordance with the Rules of 2015 with regard to carrying out mining operations by means of mining permit/quarrying lease. The State authorities have also to act in accordance with the Rules of 2015 and observations made

W.P.(C)No.23323 of 2018 87 by the Division Bench, as above.

39. In Binoy Kumar v. State of Kerala and others

[2019 (2) KHC 631] the issue raised before the Division Bench was the correctness of the judgment of a learned Single Judge as regards the liability of the appellants therein to pay penalty under the Kerala Land Conservancy Act, 1957, on the quantity of

mineral extracted by them in excess, from Government puramboke lands over which they had quarrying leases, and under circumstances where they had already paid a consolidated royalty in terms of the Kerala Minor Mineral Concession Rules, 2015 for the said quantity of the mineral extracted by them. The learned Single Judge found that there was no provision either under the Kerala Land Conservancy Act or under the Kerala Minor Mineral Concession Rules enabling the appellants to mine minerals in contravention of the conditions contained under the lease arrangements. The learned Single Judge took note of the contention in the writ petitions that, since no quantity was prescribed in the lease agreements, they were entitled to do limitless quarrying, and found that the said contention could not

W.P.(C)No.23323 of 2018 88

be legally sustained for the reason that the total tonnage charges and amounts to be paid by the lease holders were clearly prescribed in the lease agreements that were executed, and therefore, there was no basis for the contention that they were not liable to pay any amount as demanded under the Kerala Land Conservancy Act and Rules. Before the Division Bench it was contended that, a perusal of the provisions of the Kerala Minor Mineral Concession Rules, 2015 as also the prior Rules namely, the Kerala Minor Mineral Concession Rules, 1967, it can be seen that the concept of payment of royalty at consolidated rates was introduced for the first time with effect from 19.03.2002 under the Rules of 1967 and the same was continued under the Rules of 2015. While under the Rules of 1967, the payment of consolidated royalty was made mandatory and in lieu of the royalty at the rates specified in Schedule I of the said Rules, in the later Rules of 2015 the payment of royalty on consolidated basis is available as an option to persons engaged in operating metal crusher units. Once the royalty is paid on consolidated basis, either by reference to the jaw size of the crushers used in

W.P.(C)No.23323 of 2018 89

the unit or on the basis of the number of passes issued for transporting the granite building stone, the lease holder obtains the right to extract limitless quantity of minerals from the land covered by the quarrying lease. Therefore, in view of the

collection of consolidated royalty, there was no justification whatsoever for the State Government to impose any penalty or compensation amounts on the lease holders, in terms of the Kerala Land Conservancy Act and the Rules made thereunder.

40. In Binoy Kumar, on a consideration of the rival

submissions, the Division Bench found that, it is not in dispute that as per the terms of the grant under the Kerala Minor Mineral Concession Rules, the appellants were permitted to extract only a defined quantity of mineral from the area leased out to them under the quarrying lease. It is also an admitted fact that the appellants had extracted quantities far in excess of what was specified in the grant issued to them. The question considered by the Division Bench was as to whether the manner in which the royalty amount was paid by them, in respect of the quantity of mineral extracted from the lands leased out to them, would

W.P.(C)No.23323 of 2018 90

entitle them to claim any right over the excess quantity extracted by them from the lands in question. The Division Bench noticed that the lands in question are all puramboke lands, over which the Government have granted limited rights by way of quarrying lease to the appellants. When the appellant exceeds the permission granted to them under the grants, they effectively resort to an unauthorised extraction since the grant has to be seen as the authority on the basis of which they can extract minerals from Government land up to the specified quantity. Therefore, the Division Bench held that the mere payment of a consolidated royalty by the appellants will not detract from the fact of unauthorised extraction to the extent it is in excess of the permitted quantity specified in the grant. The appellants, having admittedly resorted to extraction over and above the quantity permitted in the grants issued to them, have necessarily to bear the legal consequences that would result from such unauthorised extraction, both under the Kerala Minor Mineral Concession Rules as also under the Kerala Land Conservancy Act.

41. In Binoy Kumar the Division Bench noticed a circular W.P.(C)No.23323 of 2018 91

dated 20.05.2009 of the Director of Mining and Geology which suggests that the Department of Mining and Geology has taken a view that those metal crusher units that have opted for payment of royalty on consolidated basis, will be exempted from further steps against them for realising royalty in respect of the excess quantity of granite building stones quarried, over what has been permitted in the grant order of quarrying lease. The Division Bench held that the clarification given by the Director of Mining and Geology which suggests that mining can be done in excess of the quantity permitted in the grant, does not accord with the statutory provisions that determine the rights of the metal crusher units. The Division Bench made it clear that the said circular shall not be seen as conferring any rights on the quarrying lease holders who must necessarily confine their extraction to what is expressly permitted in the grants issued to them under the Kerala Mines and Mineral Concession Rules. The Division Bench added that the issuance of grants by the State Government, for quarrying activities in various locations in the State, is necessarily to be seen as guided by the data available

W.P.(C)No.23323 of 2018 92

with the State Government with regard to availability of minerals in any particular area, the lie and nature of the land in question. The specific grants given by the State Government for mining activities must be seen in the backdrop of the data possessed by the State Government with respect to the extent of mineral available in such lands and accordingly, the quantity permitted for extraction in each of the mining lands must be seen as the sole quantity in respect of which the permit for quarrying is granted. The State Government, in its role as a guardian of the ecology and preserver of the natural resources within the State cannot permit extraction of minerals in an unscientific way and regardless of the adverse impact that it may have on the

environment and local ecosystem. The State Government, therefore, must endeavor to ensure that circulars, such as the one quoted above of the Director of Mining and Geology are not issued unmindful of the consequences that they would

entail, and is accordingly advised to exercise more caution while issuing such circulars in future. For the reasons stated above, the Division Bench found no reason to interfere with the judgment of

W.P.(C)No.23323 of 2018 93 the learned Single Judge, save to the extent of clarifying that the installment facility granted for payment of the amounts demanded against the appellants shall commence from 01.04.2019.

42. In *George Antony and others v. Director of*

Mining and Geology, Thiruvananthapuram and others [2020 (1) KHC 17], the issue that came up for consideration before this Court in W.P.(C)No.17679 of 2019 and connected cases is as to whether a person holding a valid quarrying lease from the Government can only extract that quantity of minor mineral which is specifically permitted under it and no more. In W.P.(C)No.17679 of 2019 Ext.P1 quarrying lease was one dated 03.03.2008; in W.P.(C)No.21196 of 2019 Ext.P1 quarrying lease was one dated 13.03.2009; and in W.P.(C)No.25544 of 2019 Ext.P1 quarrying lease was one dated 16.08.2010. In the said decision, this Court found that the Division Bench of this Court in *Binoy Kumar* [2019 (2) KHC 631] declared that a quarrying lease holder can be allowed to extract only that amount of minerals as are specifically sanctioned by the quarrying lease,

W.P.(C)No.23323 of 2018 94

since it is this document which operates as the sole agreement between the Government and the lease holder as regards the quantity of the minerals to be extracted. The judgment further declares that it is solely for the Government, as the owner of the minerals, to decide how much of it can be extracted, which is then specified in the quarrying lease. Therefore, it is irrelevant, whether a person thereafter obtains a mining plan showing a larger quantity of minerals to be extracted or otherwise, since the unequivocal declaration of law is to the effect that the quarrying lease should be the sole document to guide all action for quarrying the minerals and in determining its amount that can be extracted.

43. The learned counsel for the 6th respondent would

submit that the decision of this Court in George Antony is with reference to the provisions under Section 5 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 9 of the Minor Mineral Concession Rules, 1960. As per Section 14 of the Mines and Minerals (Development and Regulation) Act, provisions under Sections 5 to 13 (inclusive) of the said Act shall

W.P.(C)No.23323 of 2018 95 not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. On the other hand, the learned counsel for the petitioner and also the learned Government Pleader for the official respondents would point out that, Ext.P1 quarrying leases produced along with W.P. (C)No.17679 of 2019 and connected cases were issued under the provisions of the Kerala Minor Mineral Concession Rules, 1967 for extracting minor mineral, namely, granite building stone.

44. In George Antony, this Court gave liberty to the

competent authority, namely, the Director of Mining and Geology, to consider the grant of additional quarrying leases to the petitioners, implicitly following all the applicable procedures and after ensuring that they have the necessary mining plan and environmental clearance for the additional quantity of the mineral to be extracted.

45. The petitioner in W.P.(C)No.21196 of 2019 challenged the judgment in George Antony, to the extent the following reliefs were declined;

(i) Issue a writ of mandamus or any other appropriate W.P.(C)No.23323 of 2018 96

writ, order or direction commanding respondents 2 and 3 to re-fix the software KOMPAS (Kerala Online Mining Permit Awarding Services) in the case of the petitioner, with the upper limit as 80,000 tonns a year, for the petitioner to extract granite and use it in its Registered Metal Crusher Units, within specified time limit, in the interest of justice.

(ii) To declare that the Registered Metal Crusher Units have

the right under Rule 89 of the Kerala Minor Mineral Concession Rules, 2015 to extract minerals on the strength of the machine capacity, under the Consolidated Royalty Payment System.

46. In Ayikkarathundathil Aggregates v. State of

Kerala and others [Judgment dated 02.03.2020 in W.A.No.364 of 2020] the Division Bench of this Court dismissed that writ appeal, holding that, merely because the appellant secured registration of the metal crusher unit under Rule 89 of the Rules of 2015, to have the advantage of payment of consolidated royalty, nowhere in the rules, the appellant is permitted to carry on the quarrying operations without any restriction for quantity. The Division Bench noticed that, it is an admitted fact that as per the quarrying lease, the appellant is permitted to carryout quarrying operation to a limited extent alone. Therefore, there is

W.P.(C)No.23323 of 2018 97 no force in the contention advanced by the appellant, with

respect to its privilege to carryout quarrying operations irrespective of any limit prescribed in the quarrying lease, and the registration granted to the metal crusher unit, since no such privilege is conferred as per Rule 89 of the Rules of 2015. The payment enjoyed under the consolidated royalty payment system is not a panacea for the appellant to overlook the conditions in the quarrying permit granted, which are mandatory and imperative in nature and character. The Division Bench noticed that, this issue was considered in Binoy Kumar [2019 (2) KHC 531], wherein the question before the Division Bench was whether a person who has registration to the metal crusher unit is entitled to carryout quarrying operations without any limit prescribed under the quarrying lease, vis-a-vis the action taken by the authority under the Rules of 2015, for realising the royalty charges and other payments, in accordance with the provisions of the said Rules as well as the Kerala Conservancy Act and the Rules made thereunder. In the said decision, it was held that the mere payment of consolidated royalty by the appellants will not detract

W.P.(C)No.23323 of 2018 98

from the fact of unauthorised extraction to the extent it is in excess of the permitted quantity specified in the grant. The appellant, having admittedly resorted to extraction over and above the quantity permitted in the grant issued to it, have necessary to bear the legal consequences that would result from such unauthorised extraction, both under the Kerala Minor Mineral Concession Rules and also under the Kerala Land Conservancy Act.

47. In Binoy Kumar the Division Bench repelled the

contention raised by the appellant therein that, once the royalty is paid on consolidated basis, either by reference to the jaw size of the crushers used in the unit or on the basis of the number of passes issued for transporting the granite building stone, the lease holder obtains the right to extract limitless quantity of minerals from the land covered by the quarrying lease, and the further contention that, in view of the collection of consolidated royalty, there was no justification whatsoever for the State Government to impose any penalty or compensation amounts on the lease holders, in terms of the Kerala Land Conservancy Act

W.P.(C)No.23323 of 2018 99

and the Rules made thereunder. The Division Bench found that, as per the terms of the grant under the Kerala Minor Mineral Concession Rules, the appellant therein was permitted to extract only a defined quantity of mineral from the area leased out to it under the quarrying lease. As held by the Division Bench of this Court in Binoy Kumar the specific grants given by the State Government for mining activities must be seen in the backdrop of the data possessed by the State Government with respect to the extent of mineral available in such lands and accordingly, the quantity permitted for extraction in each of the mining lands must be seen as the sole quantity in respect of which the quarrying lease is granted. The State Government, in its role as a guardian of the ecology and preserver of the natural resources within the State cannot permit extraction of minerals in an unscientific way and regardless of the adverse impact that it may have on the environment and local ecosystem. The law laid down by the Division Bench of this Court in Binoy Kumar that the quantity permitted for extraction in each of the mining lands must be seen as the sole quantity in respect of which the

W.P.(C)No.23323 of 2018 100 quarrying lease is granted is equally applicable to lands other than puramboke lands covered by a quarrying lease granted under the provisions of the Rules of 1967 or the amended Rules of 2015. The contention to the contra raised by the learned counsel for the 6th respondent can only be rejected as untenable.

48. In Ayikkarathundathil Aggregates the Division

Bench of this Court followed the law laid down in Binoy Kumar that the mere payment of consolidated royalty will not detract from the fact of unauthorised extraction of minor mineral to the extent it is in excess of the permitted quantity specified in the grant. The lease holder, having resorted to extraction over and above the quantity permitted in the grant issued to him, has necessary to bear the legal consequences that would result from such unauthorised extraction.

49. The concept of payment of royalty at consolidated

rates was introduced for the first time with effect from 19.03.2002 under the Rules of 1967 and the same was continued under the Rules of 2015. The registration of metal crusher unit and payment of consolidated royalty under Rule 89 of the Rules W.P.(C)No.23323 of 2018 101

of 2015, at the rates specified in Schedule III, either by reference to the jaw size of the crushers used in the unit or otherwise, in lieu of the rates of royalty specified in Schedule I, will not entitle the holder of a quarrying lease to extract a minor mineral from a land other than puramboke land covered by a quarrying lease granted under the provisions of the Rules of 1967 or the amended Rules of 2015. Therefore, the contention raised by the learned counsel for the 6th respondent that on account of the 6 th respondent opting consolidated royalty payment system under Rule 89 of the Rules of 2015, it can extract granite building stone from the property in question, in excess of 24,000 MT per year fixed in Ext.P1 order of the 2nd respondent granting quarrying lease, can only be rejected as untenable. For extraction of granite building stone in excess of 24,000 MT per year fixed in Ext.P1

order the 6th respondent has to be proceeded against under the

provisions of the Rules of 2015 and other applicable laws.

50. The learned counsel for the 6th respondent would submit that, as held by the Apex Court in *Thresiamma Jacob v. Geologist, Department of Mining and Geology* [(2013) 9 W.P.(C)No.23323 of 2018 102

SCC 725] the ownership of mineral in the area falling within the Malabar area under the erstwhile British Government comprised in the Madras Province is with the owners or jenmis, who have proprietary rights in the land. In *Mineral Area Development Authority v. Steel Authority of India* [(2011) 4 SCC 450] the character and nature of the levy termed 'royalty' has also been referred for consideration to a Larger Bench by the order of reference dated 30.03.2011.

51. In *Dalmia Cement (Bharat) Ltd. v. State of Tamil*

Nadu [(2014) 2 SCC 279] the Apex Court considered *Thresiamma Jacob* and held that, even if it is assumed for the sake of argument that the cement companies are pattadars (or the successor in interest of such pattadars) either under the original ryotwari system or the holders of the 'ryotwari patta' pursuant to the abolition of estates/imams, and also assume for the sake of argument that each of the appellant companies is also the owners of the subsoil rights of their patta lands such ownership does not make any difference insofar as the authority of the State to collect royalty.

W.P.(C)No.23323 of 2018 103

52. In the instant case, admittedly, the 6th respondent

submitted Ext.P3 mining plan for approval before the 4th Geologist, under Rule 66 of the Rules of 2015, for extracting granite building stone from the property covered by Ext.P2 quarrying lease, for the remaining period of lease. The 6th respondent executed Ext.P2 quarrying lease with the State Government in Form H, as per the requirements of Rule 32, Chapter V of the Rules of 1967, pursuant to Ext.P1 order of the 2nd respondent Director of Mining and Geology granting quarrying lease. In view of the law laid down in *Binoy Kumar*, any extraction of granite building stone by the 6th respondent from the property in question has to

be limited to the quantity fixed in Ext.P1 order of grant, i.e., 24,000/- MT per year, for which the 6th respondent is bound to pay royalty at the rate specified in Schedule I or consolidated royalty as specified in Schedule III of the Rules of 2015.

53. Another contention raised by the learned counsel for the 6th respondent is that, in view of the law laid down by this Court in Velu V.K. and others v. Anil Kumar and others W.P.(C)No.23323 of 2018 104

[2017 (2) KHC 911], the period during which the 6 th respondent had to stop quarrying operations on account of the interim order granted by this Court has to be added to the validity period of Ext.P1 quarrying lease.

54. In Velu V.K. the stop memos, which were set aside by this Court, were issued in the year 2012 to quarrying permit holders, pursuant to the directions issued by this Court in the

judgment dated 13.08.2009 in W.P.(C)No.9605 of 2008, wherein

this Court found that the lands assigned to various quarrying permit holders in Malyattoor-Neeleeswaram Grama Panchayat had, in fact, been issued under pattas that contained a clause that the assigned lands would not be used for purposes other than for rubber cultivation, and hence the assigned lands could not be used for quarrying activities. By the judgment dated 24.04.2017, this Court allowed W.P.(C)Nos.10238 of 2012 and connected cases, by quashing the stop memos impugned therein, and answering the issues framed in favour of the petitioners therein. Taking note of the fact that the petitioners were forced to stop their quarrying activities pursuant to the stop memos issued

W.P.(C)No.23323 of 2018 105

to them, this Court made it clear that the period for which the petitioners had to stop their quarrying activities during the pendency of those writ petitions shall be added to the validity period of their existing quarrying leases, and the validity period of the quarrying lease extended accordingly by the State Government. In the instant case, this Court has already found that the approval granted by the 4 th

respondent to Ext.P3 mining plan submitted by the 6th respondent, to the extent of permitting year-wise production for the remaining period of the quarrying lease, in excess of 24,000 MT per year cannot be sustained in law. When the issue raised in this writ petition is answered against the 6th respondent, the aforesaid contention raised by the learned counsel for the 6th respondent, relying on the decision in Velu V.K. deserves no consideration at all.

55. Another contention raised by the learned counsel for

the 6th respondent and also the learned Government Pleader for the official respondents is the availability of alternate statutory remedy under Rule 98 of the Rules of 2015 before the Appellate Authority, in case the petitioner is feeling aggrieved by Ext.P3 W.P.(C)No.23323 of 2018 106 mining plan or Ext.R4(f) revised mining plan.

56. In Commissioner of Income Tax v. Chhabil Das

Agarwal [(2014) 1 SCC 603] the Apex Court held that non-entertainment of a writ petition under Article 226 of the Constitution of India when an efficacious alternative remedy is available is a rule and self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India, despite the existence of alternative remedy. However, High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same, unless he has made out an exceptional case warranting such interference or there exists sufficient ground to invoke the extraordinary jurisdiction under Article 226.

57. In Authorised Officer, State Bank of Travancore v. Mathew K.C. [(2018) 3 SCC 85] the Apex Court reiterated that the discretionary jurisdiction under Article 226 of the W.P.(C)No.23323 of 2018 107

Constitution of India is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition

under Article 226 of the Constitution of India ought not to be entertained if alternative statutory remedies are available, except in cases falling within

the well-defined exceptions as observed in *Chaabil Das Agarwal*, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice. After referring to the law laid down in *Thansingh Nathmal v. Superintendent of Taxes* [AIR 1964 SC 1419] and *Titaghur Paper Mills Company Ltd. v. State of Orissa* [(1983) 2 SCC 433] the Apex Court held that High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the

aggrieved person or the statute under which the action complained of contains a mechanism for redressal of grievance. W.P.(C)No.23323 of 2018 108 Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

58. In *Thansingh Nathmal* a Constitution Bench of the

Apex Court held that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate

W.P.(C)No.23323 of 2018 109

examination of evidence to establish the right to enforce for which the writ is claimed. The High Court does not, therefore, act as a Court of appeal against the decision of a Court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed and will leave the party applying to it to seek resort to the machinery so set up.

59. In *Titaghur Paper Mill* a Three-Judge Bench of the

Apex Court held that the Orissa Sales Tax Act, 1947 provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a

W.P.(C)No.23323 of 2018 110 special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Water Works Co. v. Hawkesford* [(1859) 6 CBNS 336] at page 356 in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute ... But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ... the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in that passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.* [1919 AC 368] and has been reaffirmed by the

Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co.* [1935 AC 532] and *Secretary of State v. Mask and Co.* [AIR 1940 PC 105]. It has also been held to be equally applicable to enforcement of rights and has been followed by the Apex Court throughout.

W.P.(C)No.23323 of 2018 111

60. In *Balkrishna Ram v. Union of India* [(2020) 2

SCC 442] one of the issues raised before the Apex Court was whether an appeal against an order of a single judge of a High Court deciding a case related to an Armed Forces personnel pending before the High Court is required to be transferred to the Armed Forces Tribunal or should be heard by the High Court. The Apex Court held that sub-section (1) of Section 14 of the Armed Forces Tribunal Act, 2007 clearly provides that the Armed Forces Tribunal will exercise powers of all Courts except the Supreme Court or High Court exercising jurisdiction under Article 226 and Article 227 of the Constitution of India. Section 34 is very carefully worded. It states that 'every suit', or 'other proceedings' pending before any Court including a High Court immediately before the establishment of the Tribunal shall stand transferred on that day to the Tribunal. The Legislature has clearly not vested the Armed Forces Tribunal with the power and jurisdiction of the High Court to be exercised under Article 226 of the Constitution. There can be no manner of doubt that the High Court can exercise its writ jurisdiction even in respect of orders passed by

W.P.(C)No.23323 of 2018 112

the Armed Forces Tribunal. Since an appeal lies to the Supreme Court against an order of the Armed Forces Tribunal, the High Court may not exercise their extraordinary writ jurisdiction because there is an efficacious alternative remedy available but that does not mean that the jurisdiction of the High Court is taken away. In a given circumstance, the High Court may and can exercise its extraordinary writ jurisdiction even against the orders of the High Court [sic: Armed Forces Tribunal].

61. In *Balkrishna Ram* the Apex Court held that the

principle that the High Court should not exercise its extraordinary writ jurisdiction when an efficacious alternative remedy is available, is a rule of prudence and not a rule of law. The Writ Courts normally refrain from exercising their extraordinary power if the petitioner has an alternative efficacious remedy. The existence of such remedy however does not mean that the jurisdiction of the High Court is ousted. At the same time, it is a well settled principle that such jurisdiction should not be exercised when there is an alternative remedy available - *Union of India v. T.R. Varma* [AIR 1957 SC 882]. The rule of

W.P.(C)No.23323 of 2018 113

alternative remedy is a rule of discretion and not a rule of jurisdiction. Merely because the Court may not exercise its discretion, is not a ground to hold that it has no jurisdiction. There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by the Armed Forces Tribunal. One must also remember that the alternative remedy must be efficacious and in

case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the Writ Court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 262].

W.P.(C)No.23323 of 2018 114

62. In the instant case, as already found, Ext.P3 mining

plan approved by the 4th respondent Geologist, permitting the 6th respondent to extract granite building stone from the property in question, for the period from

04.12.2015 to 28.05.2019, with year-wise production as 1,47,812.5 MT for the 1st, 2nd, 3rd and 4th years and 22,250 MT for the remaining period of 7 months, is in

contravention with the terms and conditions in Ext.P1 order

dated 15.11.2011 of the 2nd respondent Director of Mining and Geology, in which the production of granite building stone from the area covered under the grant is restricted to 24,000 MT per year during the tenure of the quarrying lease; the terms and conditions of Ext.P2 quarrying lease; and also Rule 66 of the Rules of 2015. When the 4th respondent, while granting approval to Ext.P3 mining plan submitted the 6th respondent under Rule 66 of the Rules of 2015, has acted contrary to the provisions of the said Rule, the statutory remedy available under Rule 98 of the Rules of 2015 will not be a bar for this Court in entertaining this writ petition, under Article 226 of the Constitution of India. The contention to the contra raised by the learned counsel for the 6th

W.P.(C)No.23323 of 2018 115 respondent and also the learned Government Pleader for the official respondents can only be rejected as untenable.

63. In this writ petition, the petitioner has also sought for

other consequential reliefs, that the 6th respondent is a violator of Environmental Impact Assessment Notification, 2006 and is not entitled for ex post facto Environmental Clearance for the mining

project in the aforesaid property; a writ of mandamus commanding the 5th respondent Environmental Engineer of the Kerala State Pollution Control Board, District Office, Palakkad to take penal action against the 6th respondent for violating the provisions of Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974; etc. One of the contentions raised by the learned counsel for the 6th respondent is that the petitioner, having failed to approach the statutory authority with a proper request, cannot seek a writ of mandamus invoking the writ jurisdiction under the Article 226 of the Constitution of India.

64. In State of U.P. v. Harish Chandra [(1996) 9 SCC 309] the Apex Court held that, under the Constitution a W.P.(C)No.23323 of 2018 116

mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law.

65. Along with the writ petition, no materials are placed on record, to show that the petitioner has already approached

the statutory authorities under the Environmental Impact Assessment Notification or the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act for redressal of his grievances against the 6th respondent. Therefore, the petitioner cannot seek a writ of mandamus in this writ petition against the statutory authorities under the said notification/Act, without first approaching the said authorities for redressal of his grievances.

W.P.(C)No.23323 of 2018 117

66. In such circumstances, this writ petition is disposed of

by directing the 2nd respondent Director of Mining and Geology, to initiate appropriate proceedings against the 6th respondent, under the provisions of the Rules of 2015 and other applicable laws, for extracting granite building stone from the property covered by Ext.P1 order of grant of quarrying lease and Ext.P2 quarrying lease executed with the State Government, in excess of 24,000 MT per year prescribed in Ext.P1 order, and finalise the same in accordance with law, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a certified copy of this judgment, with notice to the 6th respondent and also to the petitioner, and after affording them a reasonable opportunity of being heard.

No order as to costs. Sd/- ANIL K. NARENDRAN JUDGE AV/YD
W.P.(C)No.23323 of 2018 118 APPENDIX PETITIONER'S EXHIBITS: EXHIBIT
P1: A TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE 2ND
RESPONDENT DATED 15.11.2011 EXHIBIT P2: A TRUE PHOTOCOPY OF THE
MINIG LEASE EXECUTE DBY THE 4TH RESPONDENT IN FAVOUR OF THE
6TH RESPONDENT EXHIBIT P3: A TRUE PHOTOCOPY OF THE MINING PLAN
SUBMITTED BY THE 6TH RESPONDENT EXHIBIT P4: A TRUE PHOTOCOPY
OF THE CONSENT TO OPERATE DATED 04.07.2016 ISSUED BY THE 5TH
RESPONDENT TO THE 6TH RESPONDENT EXHIBIT P5: A TRUE
PHOTOCOPY OF THE CONSENT VARIATION ORDER DATED 30.03.2017
ISSUED BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT EXHIBIT P6;
A TRUE PHOTOCOPY OF THE RENEWED CONSENT VARIATION ORDER
DATED 27.03.2018 ISSUED BY THE 5TH RESPONDENT TO THE 6TH
RESPONDENT EXHIBIT P7: A TRUE PHOTOGRAPH OF THE AREA WHERE
THE 6TH RESPONDENT IS CONDUCTING MINING OEPRATIONS EXHIBIT P8:
A TRUEPHOTOGRAPH REVEALING THE DAMAGE SUSTAINED BY THE
PETITIONER'S HOUSE FROM THE BLASTING ACTIVITIES OF THE 6TH
RESPONDENT W.P.(C)No.23323 of 2018 119 EXHIBIT P9 A TRUE
PHOTOCOPY OF THE REPORT DATED

30.04.2018 FROM THE 3RD RESPONDENT TO THE KERALA STATE HUMAN
RIGHTS COMMISSION IN HRMP NO.1831/18 PKD

EXHIBIT P10; A TRUE PHOTOCOPY OF THE ORDER DATED 07.06.2018
PASSED BY THE KERALA STATE HUMAN RIGHTS COMMISSION IN HRMP
NO.1831/18 PKD EXHIBIT P11: A TRUE PHOTOCOPY OF THE FIR NO.553
REGISTERED BY THE PATTAMBI POLICE AGAINST THE 6TH RESPONDENT
EXHIBIT P12: A TRUE PHOTOCOPY OF THE REPORT PREPARED BY THE
ASSISTANT ENGINEER, PWD BUILDING DIVISION, PATTAMBI. EXHIBIT P13:
A TRUE PHOTOCOPY OF THE LETTER DATED 27.09.2019 ISSUED FROM
THE OFFICE OF THE 2ND RESPONDENT TO THE PETITIONER. EXHIBIT P14:
A TRUE PHOTOCOPY OF THE JUDGMENT DATED 19.07.2018 IN
W.P.(C)NO.22548 OF 2018 PASSED BY THE HON'BLE HIGH COURT OF
KERALA. 4TH RESPONDENT'S EXHIBITS: EXHIBIT R4(A) A TRUE COPY OF

THE NOTICE DATED 29.11.2018 ISSUED TO THE 6TH RESPONDENT BY THE 4TH RESPONDENT. EXHIBIT R4(B) A TRUE COPY OF THE LETTER DATED 03.12.2018 ISSUED BY THE 6TH RESPONDENT. EXHIBIT R4(C) A TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE OFFICER, VALLAPPUZHA TO THE 4TH RESPONDENT. W.P.(C)No.23323 of 2018 120 EXHIBIT R4(d) A TRUE COPY OF THE ANNUAL PRODUCTION

STOCK REPORT DOWNLOADED FROM THE OFFICIAL WEBSITE AND COUNTERSIGNED BY THE 6TH RESPONDENT FOR THE FINANCIAL YEAR 2018-2019, COMMENCING FROM 11.06.2018. EXHIBIT R4(e) A TRUE COPY OF ANNUAL PRODUCTION STOCK REPORT DOWNLOADED FROM THE OFFICIAL WEBSITE AND COUNTERSIGNED BY THE 6TH RESPONDENT FOR THE PERIOD FROM 01.04.2019 TO 25.05.2019.

EXHIBIT R4(f) A TRUE COPY OF THE RELEVANT EXTRACT OF THE REVISED APPROVED MINING PLAN. 6TH RESPONDENT'S EXHIBITS: EXHIBIT R6: A TRUE COPY OF THE QUARRYING LEASE EXECUTED IN FAVOUR OF THIS RESPONDENT DATED 30.11.2011. EXHIBIT R6(A): A TRUE COPY OF THE PERMISSION GRANTED BY THE EXPLOSIVE DEPARTMENT DATED 10.03.2017. EXHIBIT R6(B): A TRUE COPY OF THE PERMISSION GRANTED BY THE MINING AND GEOLOGY DEPARTMENT DATED 26.03.2018. EXHIBIT R6(C): A TRUE COPY OF THE CONSENT ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THIS DATED 27.03.2018. EXHIBIT R6(D): A TRUE COPY OF THE CERTIFICATE SHOWING

THE REMITTANCE OF ROYALTY BY THIS RESPONDENT TO THE MINING AND GEOLOGICAL DEPARTMENT DATED 26.03.2018.

W.P.(C)No.23323 of 2018 121 EXHIBIT R6(E): A TRUE COPY OF THE D&O LICENSE ISSUED BY THE VALLAPPUZHA GRAMA PANCHAYAT DATED 03.07.2018. EXHIBIT R6(F): A TRUE COPY OF THE JUDGMENT IN WP.P(C)NO.10286 OF 2017 BEFORE THIS COURT DATED 27.03.2017. EXHIBIT R6(G): A TRUE COPY OF THE JUDGMENT IN O.S.NO.160/2007 ON THE FILE OF MUNSIF COURT, PATTAMBI DATED 22.08.2012. EXHIBIT R6(H): A TRUE COPY OF THE JUDGMENT IN A.S.NO.106/2012 ON THE FILE OF SUB

COURT, OTTAPALAM DATED 21.01.2017. EXHIBIT R6(I): A TRUE COPY OF THE REGISTRATION IN FORM

-S UNDER RULE 45R GRANTED IN FAVOUR OF THE 6TH RESPONDENT BY HTE DIRECTOR OF MINING AND GEOLOGY DATED 31.03.2012.

EXHIBIT R6(J): A TRUE COPY OF THE PROCEEDINGS DATED 26.03.2013 OF THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(K): A TRUE COPY OF THE PROCEEDINGS DATED 24.09.2013 ISSUED BY THE MINING AND GEOLOGY. EXHIBIT R6(L): A TRUE COPY OF THE PROCEEDINGS DATED 04.04.2014 ISSUED BY THE MINING AND GEOLOGY. EXHIBIT R6(M): A TRUE COPY OF THE PROCEEDINGS DATED 10.04.2015 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(N): A TRUE COPY OF THE JUDGMENT DATED 23.03.2015 IN WP.P(C)NO.9152 OF 2015. EXHIBIT R6(O): A TRUE COPY OF THE JUDGMENT DATED 28.10.2016 IN W.P(C)NO.18454/2015. W.P.(C)No.23323 of 2018 122 EXHIBIT R6(P): A TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO.224 OF 2018. EXHIBIT R6(Q): A TRUE COPY OF THE PROCEEDINGS DATED 01.04.2016 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(R): A TRUE COPY OF THE PROCEEDINGS DATED 25.03.2017 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(S): A TRUE COPY OF THE PROCEEDINGS DATED 26.03.2018 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(T): A TRUE COPY OF THE PROCEEDINGS DATED 30.03.2019 ISSUED BY THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(U): A TRUE COPY OF THE INTEGRATED CONSENT TO OPERATE - RENEWAL GRANTED BY THE POLLUTION CONTROL BOARD TO THE 6TH RESPONDENT. EXHIBIT R6(V): A TRUE COPY OF THE RENEWED D&O LICENCE GRANTED TO THE 6TH RESPONDENT BY THE VALLAPUZHA GRAMA PANCHAYAT. EXHIBIT R6(W): A TRUE COPY OF THE AUDIT REPORT FOR THE PERIOD FROM 09.12.2009 TO 31.03.2012 CARRIED OUT BY THE DIRECTOR OF MINING AND GEOLOGY. EXHIBIT R6(X): A TRUE COPY OF THE CHALAN EVIDENCING PAYMENT OF DEALERS LICENCE FEE FROM 09.12.2009 TO 31.03.2012 BY THE 6TH RESPONDENT. EXHIBIT R6(Y): A TRUE COPY OF THE AUDIT REPORT FOR THE PERIOD FROM 01.04.2012

TO 31.03.2017 CARRIED OUT BY THE DIRECTOR OF MINING AND GEOLOGY.

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