

Carol vs State of Kerala

Carol vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1749402

Court : Kerala

Decided On : Feb-25-2020

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : WP(C)/5456/2020

Appellant : CAROL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
TUESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA,
1941 WP(C).No.5430 OF 2020(C) PETITIONER: THRISSUR BUILDERS
PRIVATE LIMITED MACHINGAL LANE, THRISSUR P.O., THRISSUR
VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT, REPRESENTED
BY ITS MANAGING DIRECTOR, K.A. PADMAKUMAR, AGED 52
YEARS, S/O.NARAYANAN NAIR

BY ADV. P.M.ZIRAJ RESPONDENTS: 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO
GOVERNMENT,INDUSTRIES DEPARTMENT, GOVERNMENT OF

KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001 2 THE DIRECTOR, MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY, KESAVADASAPURAM PATTAM, THIRUVANANTHAPURAM-695 001 3 THE DISTRICT GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, THRISSUR DISTRICT- OTHER PRESENT: SRI.SAIGI JACOB PALATTY, SR.GOV.T.PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25.02.2020, ALONG WITH WP(C).5456/2020(F), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C)No.5430/2020 & Con.case 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA, 1941 WP(C).No.5456 OF 2020(F) PETITIONER/S: CAROL AGED 55 YEARS W/O.MAPRANI GEORGE, MAPRANI HOUSE, THRISSUR P.O., OLLUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT. BY ADV. SRI.P.M.ZIRAJ RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001. 2 THE DIRECTOR, MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY, KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM-695001. 3 THE DISTRICT GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, THRISSUR DISTRICT-680001. OTHER PRESENT: SRI.SAIGI JACOB PALATTY, SR.GOV.T.PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25.02.2020, ALONG WITH WP(C).5430/2020(C), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C)No.5430/2020 & Con.case 3

ALEXANDER THOMAS, J.

----- W.P.(C)Nos.5430 & 5456 of 2020
----- Dated this the 25th day of February,
2020

JUDGMENT

As the issues raised in these two Writ petitions are broadly similar, these cases are disposed of, on the basis of common judgment. W.P.(C)No.5430/2020 The prayers in the Writ Petition (Civil) are as follows:-

1. Issue a writ of mandamus or any other appropriate writ, orders or direction to the third respondent to consider exhibit P6 application submitted by the petitioner for mining permit to extract and transport minerals from the foundation of a building without insisting environmental clearance since it has been exempted as per the notification of Ministry of Environment Forest and Climate Change dated 9.12.2016 and 15.11.2018 and issue Mining Permit, Transit Permit and sufficient Transit Passes for transportation of said earth.

2. Declare that environmental clearance is not required for extraction and

transportation of minerals removed from the foundation of a building having a plinth area of less than 20000 M2 as per the Notification of Ministry of Environment Forest and Climate Change dated 15.1.2016 and 19.12.2016.

2. Heard Sri. P.M. Ziraj, learned counsel appearing for the petitioner and Sri. Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. It is submitted by Sri. P.M. Ziraj, learned counsel appearing for the

petitioner that the petitioner has now submitted Ext.P6 application dated 10.2.2020 before the 3rd respondent District Geologist for formal grant of quarrying permit for removal of red earth which is required for the excavation for W.P.(C)No.5430/2020 & Con.case 4 making the construction in pursuance of the building permit etc. and that the total plinth area of construction is only around 8683.13 M² and as the

total quantity in this regard is much less than to the threshold limit of 20,000M², and environmental clearance is not necessary and therefore, insistence by the 3rd respondent that the petitioner should necessarily produce the environmental clearance before Ext.P6 application to be considered is not legally correct and proper etc.

4. Taking note of the facts and circumstances, it is ordered that the 3rd

respondent District Geologist may take up the plea made by the petitioner in Ext.P6 application and after conducting site inspection and after affording reasonable opportunity of being heard to the petitioner, will pass orders disposing of Ext.P6 application without much delay, preferably within a period of 2-3 months from the date of production of a certified copy of this judgment, provided, the petitioner makes available all the requisite documents required as per the Rules for consideration of the said application. However, it is made clear and ordered that in view of the dictum laid down by the Division Bench of this Court in District Geologist v. Sivaraman [2020 (1) KLT 375(DB)], the total plinth area of construction is less than the threshold limit of 20,000M², then environmental clearance cannot be insisted by the 3rd respondent for consideration of Ext.P6 application. With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of. W.P.(C)No.5430/2020 & Con.case 5 W.P.(C)No.5456/2020 The prayers in this Writ Petition (Civil) are as follows:-

1. Issue a writ of mandamus or any other appropriate writ, orders or direction to the third respondent to consider exhibit P10 application submitted by the petitioner for mining permit to extract and transport minerals from the foundation of a building without insisting environmental clearance since it has been exempted as per the notification of Ministry of Environment Forest and Climate Change dated 15.01.2016 and 19.12.2016 as clarified by the judgment of this honourable court in District geologist Vs. Sivaraman 2020 (1) KLT 375 and issue Mining Permit, Transit Permit and sufficient Transit Passes for transportation of said earth.

2. Declare that environmental clearance is not required for extraction

and transportation of minerals removed from the foundation of a building having a plinth area of less than 20000 M2 as per the Notification of Ministry of Environment Forest and Climate Change dated 15.1.2016 and 19.12.2016.

2. Heard Sri. P.M. Ziraj, learned counsel appearing for the petitioner and Sri. Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents.

3. It is pointed out by the petitioner's counsel that the petitioner has

now submitted Ext.P10 application dated 28.12.2019 before the 3rd respondent seeking for grant of quarrying permit for removal and excavation of the soil for undertaking the construction in pursuance of the building permit issued to him and the total plinth area of construction is only 2495.75 M2 and that the insistence by the 3rd respondent that the petitioner should necessarily produce environmental clearance for consideration of Ext.P10 application is illegal and improper, in view of the dictum laid down by the Division Bench of this Court in District Geologist v. Sivaraman [2020 (1) KLT 375(DB)] etc. Further it is pointed out by the learned counsel for the petitioner that the petitioner would W.P.(C)No.5430/2020 & Con.case 6 produce the mining plan before the 3rd respondent as required under Rule 9 of the Kerala Minor Mineral Concession Rules, 2015 etc.

4. Taking note of the facts and circumstances of the case, it is ordered

that the 3rd respondent District Geologist will take up the plea made by the petitioner in Ext.P10 application and, after conducting due inspection and after affording reasonable opportunity of being heard to the petitioner, will pass orders disposing of Ext.P10 application, without much delay, preferably within a period of two months from the date of production of a certified copy of this judgment, provided the petitioner produces all the requisite materials and documents as required under Rule 9 of the Kerala Minor Mineral Concession Rules, 2015 etc. However, it is made clear that in view of the dictum laid down by the Division Bench of this Court in the case in District Geologist v. Sivaraman [2020 (1) KLT 375(DB)], so long as the total plinth area of construction is less than the threshold

limit of 20,000 M2, the 3rd respondent cannot insist that the applicant should produce environmental clearance as a condition precedent for consideration of Ext.P10 application. With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of. Sd/- ALEXANDER THOMAS, JUDGE.

acd W.P.(C)No.5430/2020 & Con.case 7 APPENDIX OF WP(C) 5430/2020

PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE POSSESSION, LOCATION ,NON- L.A. CERTIFICATES DATED 22.11.2019 ISSUED BY THE VILLAGE OFFICER, OLLUKKARA VILLAGE EXHIBIT P2 TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, OLLUKKARA VILLAGE EXHIBIT P3 TRUE COPY OF THE BUILDING PERMIT DATED 25.10.2019 ISSUED FORM THE THRISSUR CORPORATION EXHIBIT P4 TRUE COPY OF THE DEVELOPMENT PERMIT DATED 27.9.2018 ISSUED FROM THE THRISSUR CORPORATION EXHIBIT P5 TRUE COPY OF THE TAX RECEIPT DATED 18.5.2019 ISSUED BY THE VILLAGE OFFICER, OLLUKKARA VILLAGE EXHIBIT P6 TRUE COPY OF THE APPLICATION DATED 10.2.2020 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT EXHIBIT P7 TRUE COPY OF THE COUNTER FOIL OF CHELAN TOWARDS OF PAYMENT OF APPLICATION FEE EXHIBIT P8 TRUE COPY OF THE JUDGMNET OF THIS HONOURABLE COURT DATED 20.12.2017 IN WPC NO.36018/2017 EXHIBIT P9 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 13.03.2018 IN WPC N.8389 OF 2018 EXHIBIT P10 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 4.4.2018 IN WPC NO.10931 OF 2018 EXHIBIT P11 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 8.11.2018 IN WPC NO.34014 OF 2018 EXHIBIT P12 TRUE COPY OF THE COMMON JUDGMENT OF THIS HONOURABLE COURT DATED 10.7.2019 IN W.A.NOS

W.P.(C)No.5430/2020 & Con.case 8 APPENDIX OF WP(C) 5456/2020

PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE TAX RECEIPT DATED 01.06.2019 ISSUED BY THE VILLAGE OFFICER, CHALAKKUDY EAST VILLAGE. EXHIBIT P2 TRUE COPY OF THE POSSESSION CERTIFICATE DATED 01.06.2019 ISSUED BY THE VILLAGE OFFICER, CHALAKKUDY EAST VILLAGE. EXHIBIT P3 TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE VILLAGE OFFICER, CHALAKKUDY EAST VILLAGE. EXHIBIT P4 TRUE

COPY OF THE BUILDING PERMIT DATED 14.06.2019 ISSUED FROM THE CHALAKKUDY MUNICIPALITY. EXHIBIT P5 TRUE COPY OF THE DEVELOPMENT PERMIT DATED 06.09.2019 ISSUED FROM THE CHALAKKUDY MUNICIPALITY. EXHIBIT P6 TRUE COPY OF THE APPLICATION DATED 13.11.2019 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT. EXHIBIT P7 TRUE COPY OF THE COUNTER FOIL OF CHELAN TOWARDS OF PAYMENT OF APPLICATION FEE DATED 13.11.2019. EXHIBIT P8 TRUE COPY OF THE AFFIDAVIT DATED 12.11.2019 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT. EXHIBIT P9 TRUE COPY OF THE COMMUNICATION DATED 15.11.2019 ISSUED BY THE THIRD RESPONDENT. EXHIBIT P10 TRUE COPY OF THE APPLICATION DATED 28.12.2019 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPONDENT. EXHIBIT P11 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 20.12.2017 IN W.P. (C)NO.36018/2017. W.P.(C)No.5430/2020 & Con.case 9 EXHIBIT P12 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 13.03.2018 IN W.P. (C)NO.8389 OF 2018. EXHIBIT P13 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 04.04.2018 IN W.P. (C)NO.10931 OF 2018. EXHIBIT P14 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 08.11.2018 IN W.P. (C)NO.34014 OF 2018. EXHIBIT P15 TRUE COPY OF THE COMMON JUDGMENT OF THIS HONOURABLE COURT DATED 10.07.2019 IN W.A.NO.215/2018 AND 327/2018.

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