

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

Monday, the 15<sup>th</sup> day of January 2024 / 25th Pousha, 1945

WP(C) NO. 7203 OF 2023

PETITIONER:

K. SEKHARAN, [REDACTED]  
[REDACTED]  
[REDACTED]

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN- 695001
2. THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM DISTRICT COLLECTORATE, KUDAPPANAKKUNNU, THIRUVANANTHAPURAM, PIN- 695034
3. STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY, PALLIMUKKU, KANNAMoola ROAD, OVER BRIDGE, VELAKUDI, THIRUVANANTHAPURAM, PIN- 695024
4. THE DISTRICT ENVIRONMENT IMPACT ASSESSMENT AUTHORITY (DEIAA), CIVIL STATION, THIRUVANANTHAPURAM , PIN-695004
5. THE DIRECTOR MINING AND GEOLOGY, KESHAVADASAPURAM, PATTOMN PALACE, THIRUVANANTHAPURAM, PIN-695004
6. THE DISTRICT ENVIRONMENTAL ENGINEER, STATE POLLUTION CONTROL BOARD, PLAMOODU, THIRUVANANTHAPURAM, PIN- 695004
7. THE VELLARADA GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, VELLARADA P.O., THIRUVANANTHAPURAM, PIN- 695505
8. THE TAHSILDAR, TALUK OFFICE, NEYYATTINKARA, THIRUVANANTHAPURAM, PIN- 695124
9. THE SUPERINTENDENT OF POLICE, THIRUVANANTHAPURAM RURAL, THIRUVANANTHAPURAM, PIN- 695124
10. THE CHIEF CONSERVATOR OF FOREST AND WILD LIFE, VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN-695014
11. TRAVANCORE READY MIX (PVT) LTD., REPRESENTED BY ITS MANAGING DIRECTOR, SUDHAKARAN, TC NO., 54/924, ROHINI SADANAM, MELAMCODE, NEMOM P.O., THIRUVANANTHAPURAM, PIN-695020

Writ Petition (Civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the quarrying operation by 11th respondent in block No. 35, Re-Survey Nos. 11/2, 11/2-1., 11/4, 11/5, 11/5-1, 11/6, 11/7, 11/8, 11/9, 11/12-1-1, 11/13, 11/14, 11/15-1, 10/2-1, 10/2-2, 10/3, 10/3-1, 10/13, 10/14, 10/15, 10/16 of Vellarada Village, pending disposal of the Writ Petition (Civil).

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 11-01-2024 and upon hearing the arguments of SRI. R.GOPAN, Advocate for the petitioner, M/S. SRI. S. SREEKUMAR (SENIOR) along with M/S. LEO

**LUKOSE, ENOCH DAVID SIMON JOEL, S.SREEDEV, RONY JOSE, KAROL MATHEWS  
SEBASTIAN ALENCHERRY & DERICK MATHAI SAJI, Advocates for R11, the court  
passed the following:**



**VIJU ABRAHAM, J.**

.....  
**W.P (C) Nos.7203 of 2023 & 15771 of 2023**  
.....

Dated this the 15<sup>th</sup> day of January, 2024

**ORDER**

The matter has been posted before this Court today (15.01.2024) for hearing on the interim application for stay.

2. In both these writ petitions, the petitioners challenge the quarrying activities undertaken by the 11<sup>th</sup> respondent in W.P (C) No.7203 of 2023.

3. As per the averment in W.P (C) No.7203 of 2023, the petitioner is residing within 50 metres from the quarry operated by the 11<sup>th</sup> respondent. As averred in the writ petition, the quarry is functioning on the strength of Ext.P1 Environmental Clearance issued by the 4<sup>th</sup> respondent District Environmental Impact Assessment Authority, Ext.P2 Consent to Operate issued by the 6<sup>th</sup> respondent Pollution Control Board, Ext.P3 Explosive Licence issued by Addl. District Magistrate, Ext.P4 D&O Licence issued by the 7<sup>th</sup> respondent local authority and Ext P5 Quarrying Lease issued by the 5<sup>th</sup> respondent Director, Mining and Geology. Petitioners contention that the 11<sup>th</sup> respondent is conducting illegal quarrying operations is mainly on two grounds: 1) The quarry is functioning within 10 kms of the Neyyar Wildlife Sanctuary as is evident from Ext.P6 issued by the office of

the Wildlife Warden, Thiruvananthapuram, and 2) The properties of the 11<sup>th</sup> respondent wherein quarrying permit was granted having an extent of 3.6528 hectares comprised in block no.35, re-survey nos.11/2, 11/2-1, 11/4, 11/5, 11/5-1, 11/6, 11/7, 11/8, 11/9, 11/12-1-1, 11/13, 11/14, 11/15-1, 10/2-1, 10/2-2, 10/3, 10/3-1, 10/13, 10/14, 10/15 and 10/16 of Vellarada Village are assigned lands as per the land assignment proceedings and going by the decision of this Court in ***Raphy John v. State of Kerala, 2022 (3) KLT 679***, no quarrying operation can be carried out in lands assigned for special purpose.

3. It is submitted by the learned counsel for the petitioner that the above-referred lands were comprised in old survey no.767/1 of Vellarada Village and the land comprised in the said survey number having an extent of 277 acres is Government land that has been assigned to people belonging to "Kanni" by various assignments. To substantiate the contention, the petitioner has produced Ext.P7 settlement register, Ext.P8 assignment deed issued in favour of one Krishna Panickar, Ext.P9 photocopy of the BTR in old survey no.767/1 and Ext.P10 resurvey plan. Petitioner also relies on Ext.P11 field register in block no.35. Petitioner also contends that in respect of another quarry which is situated within 1.5 km from the 11<sup>th</sup> respondent quarry, which was also functioning in an assigned land, this Court has interfered and stayed the operation of the said quarry as per Ext.P13 interim order in W.P(C) No. 21426

of 2022.

4. The 11<sup>th</sup> respondent has filed a detailed counter affidavit mainly contending that the averment that the quarrying activities are carried out in an assigned land is false in as much as various permissions and licences were issued to the 11<sup>th</sup> respondent only after factual verification that the lands are not assigned lands and only based on such certification that various licences were issued and to substantiate the same Exts.R11(a) to R11(c) certificates issued by the revenue officials were produced. It is further contended that the averments in the writ petition that all the lands over which quarrying activities are being undertaken are assigned lands are factually incorrect. As regards the other averment that the quarry is being conducted within the objectionable limit of Neyyar Wildlife Sanctuary, it is the contention of the 11<sup>th</sup> respondent that Ext.R11(d) draft notification regarding Eco-Sensitive Zone was published by the Ministry of Environment, Forest and Climate Change and the quarry is functioning outside the eco-sensitive zone and therefore clearance of the National Board of Wildlife is not required.

5. A statement has been filed by the 8<sup>th</sup> respondent Tahsildar wherein based on the records it is submitted that the property covered by Ext P5 which was originally comprised in Survey no. 767/1 of erstwhile Kunnathukal B Village, now comprised in re-survey nos.11/2, 11/2-1, 11/4, 11/5, 11/5-1, 11/6,

11/7, 11/8, 11/9, 11/12-1-1, 11/13, 11/14, 11/15-1, 10/2-1, 10/3, 10/3-1, 10/13, 10/14, 10/15 and 10/16 of block no.35 of Vellarada Village are lands originally assigned under the Kerala Land Assignment Act, 1960 and the rules made thereunder.

6 Likewise, a statement has been filed by the 10<sup>th</sup> respondent wherein it is submitted that the proposed quarry site is located in the south-western direction of Neyyar Wild Life Sanctuary and falls outside the draft eco-sensitive zone notified area.

7. In W.P(C) No.15771 of 2023, similar contentions were raised wherein reliance was placed on the judgment in **Raphy John's** case cited supra. The petitioner also relies on Ext.P4 counter affidavit filed in W.P(C) No.21426 of 2022 wherein Ext.P13 interim order was granted, wherein it is stated that certain areas where quarrying activities were undertaken by the 11<sup>th</sup> respondent in the said writ petition were assigned lands under the Kerala Land Assignment Act,1960 and the Rules made thereunder and that no quarrying activity can be permitted in the said land. In the said writ petition, Ext. P13 interim order was granted and the learned counsel for the petitioner would contend that as per the stand taken by the official respondents in Ext.P4 counter affidavit, no quarrying activities could be undertaken in an assigned land and that similar interim order may be granted in the present case also as

against the quarrying operation undertaken by the 9<sup>th</sup> respondent (11<sup>th</sup> respondent in W.P(C) No.7203 of 2023).

8. It is also relevant to note that the 7<sup>th</sup> respondent in W.P.(C) No.15771 of 2023, Tahsildar, Neyyattinkara has produced copies of certain pattas issued under Rule 9(2) of the Kerala Land Assignment Rules with the report of the Village Officer, Vellarada in respect of the properties in which the 9<sup>th</sup> respondent (11<sup>th</sup> respondent in W.P.(C) No.7203 of 2023) was issued a quarrying lease.

9. I have considered the rival contentions on both sides. In **Raphy John's** case cited supra wherein in paragraph 138 it is held as follows:

*“138. Not only the Government have not done so, but also none of the quarry operators have a case that any exemption is granted under R.24 of the Rules, 1964 and assigned lands, so as to secure the certificate from the Village Officer concerned as contemplated under R.27(2)(f) of the KMMC Rules, 2015 enabling the authority under the said rules to execute quarrying lease or grant permit. In our considered opinion, the quarry and other operators are not entitled as of right, to secure a quarrying lease, in contemplation of Rules, 2015, if the lands are assigned for any special purpose by the Department of Land Revenue.”*

Based on the dictum laid down in **Raphy John's** case cited supra and the stand taken by the Tahsildar in Ext.P4 counter affidavit filed in W.P(C) No.21426 of 2022, in which Ext.P13 interim order has been granted, no quarrying activity can be permitted to be carried out in lands which were

assigned as per the provisions of the Kerala Land Assignment Act,1960 and the Rules made thereunder. In light of the above, the question to be considered is as to whether the property covered by Ext.P5 quarrying lease are properties once assigned as per the provisions of the Kerala Land Assignment Act,1960 and the Rules made thereunder so that the dictum in **Raphy John's** case cited supra would apply. The statement filed by the 8<sup>th</sup> respondent Tahsildar in W.P(C) No.7203 of 2023 makes it clear that the properties covered by Ext.P5 which were originally comprised in survey no.767/1 of erstwhile Kunnathukal B Village, now comprised in re-survey nos.11/2, 11/2-1, 11/4, 11/5, 11/5-1, 11/6, 11/7, 11/8, 11/9, 11/12-1-1, 11/13, 11/14, 11/15-1, 10/2-1, 10/3, 10/3-1, 10/13, 10/14, 10/15 and 10/16 of block no.35 of Vellarada Village are lands originally assigned under the Kerala Land Assignment Act, 1960 and the Rules made thereunder.

In view of the above facts and circumstances discernable from the pleadings on both sides and taking into consideration the fact that if further quarrying is permitted, pending adjudication of the rival claims in the above writ petitions, it will cause substantial prejudice to the petitioners and damage to the property covered by Ext.P5 lease deed, which is contended to be an assigned land as per the provisions of the Kerala Land Assignment Act, 1960 and the Rules made thereunder, I am of the opinion that an interim order



should be granted in these cases. Therefore, there will be a stay of quarrying operation by the 11<sup>th</sup> respondent in W.P.(C) No.7203 of 2023 from the property comprised in re-survey nos.11/2, 11/2-1, 11/4, 11/5, 11/5-1, 11/6, 11/7, 11/8, 11/9, 11/12-1-1, 11/13, 11/14, 11/15-1, 10/2-1, 10/2-2, 10/3, 10/3-1, 10/13, 10/14, 10/15 and 10/16 of block no.35 of Vellarada Village pending disposal of these writ petitions. Respondents 2 and 5 to 8 in W.P.(C) No.7203 of 2023 are directed to take immediate steps to see that the interim order is complied forthwith.



**Sd/-  
VIJU ABRAHAM  
JUDGE**