

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945

WP(C) NO. 11840 OF 2023

PETITIONER:

SINOJ THOMAS,
AGED 39 YEARS
S/O. THOMAS, CHETTIKATTU HOUSE,
KONNAKKADU P.O., KONNAKKADU, PARAPPPA (VIA),
KASARAGOD DISTRICT, PIN - 671533

BY ADVS.
PHILIP J.VETTICKATTU
SAJITHA GEORGE
NEENU BERNATH

RESPONDENTS:

- 1 BALAL GRAMA PANCHAYAT,
BALAL P.O.
KASARAGOD DISTRICT
REPRESENTED BY THE SECRETARY,
PIN - 671533
- 2 THE SECRETARY,
BALAL GRAMA PANCHAYATH, BALAL P.O.
KASARAGOD DISTRICT, PIN - 671533

BY ADV K.SEENA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 05.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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N. NAGARESH, J.

.....
W.P.(C) No.11840 of 2023
.....

Dated this the 5th day of July, 2023

J U D G M E N T

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The petitioner, who is a grantee of Letter of Intent for establishing a Quarrying Unit in Maloth Village, Vellarikkundu Taluk in Kasaragod District, has filed this writ petition aggrieved by Ext.P12 decision and seeking to direct the 1st respondent-Grama Panchayat to issue permission to the petitioner for conducting quarrying operations forthwith.

2. The petitioner holds 2.3310 hectares of land comprised in Survey No.193 of Maloth Village, Vellarikkundu Taluk in Kasaragod District. The Director of Mining and

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Geology issued Ext.P1 Letter of Intent dated 19.09.2017 to the petitioner for Quarrying Lease under the Kerala Minor Mineral Concession Rules, 2015. The petitioner submitted application to the competent authority and the Geologist approved Ext.P2 Mining Plan for Granite building stone Quarry, to the petitioner.

3. The petitioner applied for Environmental Clearance. The District Environmental Impact Assessment Authority, Kasaragod granted Environmental Clearance to the petitioner on 25.04.2018. The petitioner would submit that the validity of the said Environmental Clearance is still current in view of the notifications issued by the Ministry of Environment, Forest and Climate Change. The Pollution Control Board also issued to the petitioner Ext.P6 Consent to Operate. The Joint Chief Controller of Explosives granted the petitioner Ext.P7 Explosives Licence.

4. To start the quarrying operations, the petitioner further required permission/licence of the Panchayat authorities under Sections 232 and 233 of the Kerala

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Panchayat Raj Act, 1994. The petitioner therefore submitted Ext.P9 application on 17.02.2023. The petitioner remitted the required licence fee. But, the Secretary to the Panchayat returned the licence fee and intimated that the fees may be remitted upon getting further instructions from the Panchayat.

5. To the surprise and predicament of the petitioner, the application submitted by the petitioner for permission to establish Quarry was dismissed by the 1st respondent-Panchayat as per its decision dated 24.03.2023. The decision to not grant permission to the petitioner was on the basis of a decision of the Panchayat that a new Quarry need not be permitted in the Panchayat area.

6. The petitioner submits that he was not granted an opportunity of being heard before the Panchayat taking the decision adverse to the petitioner. The petitioner would further submit that in view of the amendment effected to Section 233 of the Panchayat Raj Act, 1994, the Panchayat does not have jurisdiction, authority, power or right/discretion to refuse/reject an application for permission. The reason for

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which the application of the petitioner has been rejected is unsustainable in law, contended the petitioner.

7. Respondents 1 and 2 resisted the writ petition filing counter affidavit. Various objections and complaints were received by the Panchayat authorities from the general public stating that the petitioner has not obtained NOC from the Environmental Impact Assessment Authority. One Rijosh M.J., representing Chamathatta Samrakshana Samithi, submitted a complaint against the proposed Quarry. The complainants were heard. A clarification was sought for from the District Collector as to whether the NOC from the Environmental Impact Assessment Authority and Explosives Licence are still in force.

8. The District Collector has not so far given any reply to the letter sent by the Panchayat. The writ petition is bad for non-joinder of necessary parties, urged the respondents. The Panchayat Committee decided on 24.03.2023 to reject the application of the petitioner. The writ petition is therefore devoid of any merit and it is only to be

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dismissed, contended the respondents.

9. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

10. The petitioner proposed to start a quarrying unit in 2.3310 hectares of land in Maloth Village. The petitioner was issued with Ext.P1 Letter of Intent by the Director of Mining and Geology, on 19.09.2017. The petitioner thereafter approached the Geologist along with the Mining Plan for Granite building stone Quarry. The Senior Geologist approved Ext.P2 mining plan.

11. Thereafter, the petitioner approached the District Environmental Impact Assessment Authority, Kasaragod for Environmental Clearance. The Environmental Impact Assessment Authority forwarded the application to the District Expert Appraisal Committee for appraisal of the proposal. The District Expert Appraisal Committee conducted a site inspection on 22.02.2018. The District Expert Appraisal Committee recommended issuance of Environmental Clearance for the Granite building stone

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Quarry project of the petitioner in Maloth Village.

12. The District Environmental Impact Assessment Authority chaired by the District Collector convened its meeting on 20.03.2018. After discussion of the case with the expert member and other members, the Authority decided to issue Environmental Clearance on conditions. Accordingly, Ext.P3 Environmental Clearance was issued on 25.04.2018.

13. The petitioner approached the Joint Chief Controller of Explosives. The Joint Chief Controller of Explosives also gave Ext.P7 Explosives Licence to the petitioner. However, the Panchayat authorities rejected the application of the petitioner for permission and licence submitted under Sections 232 and 233 of the Kerala Panchayat Raj Act, 1994. It is aggrieved by Ext. P12 decision of the Panchayat Committee taken on 24.03.2023 that the petitioner has filed this writ petition.

14. I have perused Ext.P12 decision of the Panchayat Committee which decided not to give permission to the petitioner to start Quarrying Unit. The Panchayat Committee

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noted that though complainants against the Quarry had produced an order of the District Collector refusing to issue NOC for Explosives Licence, the Petroleum and Explosives Safety Organisation has issued Explosives Licence to the petitioner.

15. Though a clarification from the District Collector was sought for in the matter, no clarification has been received. The Panchayat Committee noted that in view of the various licences, consents and permissions produced by the petitioner, permission can be granted. However, the Members of the Panchayat Committee decided not to grant permission.

16. Apart from projecting that it is a decision of the Panchayat Committee members, Ext.P12 does not contain any reason for rejection of the application of the petitioner. It is to be noted that if environmental pollution is the concern of the Panchayat, that aspect was considered by the competent authority namely, the Environmental Impact Assessment Authority. The District Environmental Impact Assessment

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Authority chaired by the District Collector had convened its meeting on 20.03.2018 and after discussion of the case with the expert member and other members, the authority has decided to issue Environmental Clearance on conditions. When a competent authority has considered the issue and decided in favour of the petitioner, the Panchayat Committee could not have taken a decision, that too without any expert study in the matter.

17. A Full Bench of this Court considered the impact of amendment effected to Section 233 of the Kerala Panchayat Raj Act, 1994 by Amendment Act, 14 of 2018 on the power or authority of Panchayats in refusing permission to establish factory, work shop, workplace or other installation of machinery or manufacturing plant for which permission under Section 233, in ***Tomy Thomas v. State of Kerala [2019 (3) KLT 987 (FB)]***.

18. In paragraph 23 of the judgment, the Full Bench held as follows:

23. Under the above mentioned circumstances the reference is answered by upholding the view taken

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in Ramapuram Grama Panchayat (supra) as the correct law. But we make it clear that the legal position has been changed by virtue of the amendments as mentioned above and the Village Panchayats do not enjoy any primacy of their power to refuse the applications seeking permission for construction or establishment of any factory workshop or workplace, under S. 233 of the Kerala Panchayat Raj Act, on and from the date of enforcement of the amendments.

In view of the amendment made to Section 233 and in view of the law laid down by this Court in ***Tomy Thomas*** (supra), Ext.P12 decision of the respondents is illegal and ultravires.

19. It is a travesty of justice that some of the Panchayats in Kerala which are given constitutional status in view of the Three-Tyre Local Self Governance System contemplated under Articles 243 to 243-O, often exercise powers not vested in them impeding regular statutory processes and putting citizens into unwanted litigations. Under the scheme of Panchayat Raj, the State legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions related to Grama Panchayat work with respect to

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the preparation of plans for economic development and social justice, the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the 29 matters listed in the Eleventh Schedule.

20. The Panchayat institutions but can exercise only those powers conferred on and vested with them by legislature. The Panchayats cannot act as if they are protectors and enforcers of all public interests and exercise powers not vested with them. In the present case, in the matter of Section 233 of the Panchayat Raj Act, 1994, the power of the Panchayat is laid down in the Act with clarity. If anyone harbours any doubt in that regard, a Full Bench of this Court has clarified the limitations of power with precision and clarity. Yet the 1st respondent-Panchayat has taken Ext.P12 decision ignoring the law, and based on subjective opinions of Panchayat Committee members.

21. In our Constitutional Scheme of Governance, we have created various statutory authorities administering and

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governing multiple areas of social life. All statutory authorities have their own fields/areas where they have expertise. We have State Pollution Control Boards who are experts in their areas and are legally bound to consider all aspects of Air, Water and Sound pollution concerning existing and new establishments and entities. State and District Environmental Impact Assessment Authorities are expert bodies who give Environmental Clearances to new projects in consultation with District Environmental Appraisal Committees. The Explosives Act has created Commissionerates to deal with Explosives Safety concerns.

22. When such specialised and expert statutory bodies are created, Panchayat Committees, who cannot claim expertise in those areas, cannot take a view contrary to that of other competent statutory authorities. Citizens who opt for start ups and entrepreneurships should be able to rely on the decisions and clearances given by specialised statutory bodies and go ahead with their projects. Local Self Government Institutions cannot take a view different from the

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views of other statutory bodies and stop or create hurdles for the entrepreneurs in going ahead with projects which are permitted under laws.

23. For all the afore reasons, Ext.P12 decision of the 1st respondent-Panchayat is set aside. In view of the eligibility of the petitioner noted in Ext.P12, the 1st respondent is directed to issue permission to the petitioner within a period of one month to conduct quarrying operations based on the licences, clearances and consents obtained by the petitioner. There will be a further direction to the 2nd respondent to issue Licence to the petitioner under Section 232 of the Panchayat Raj Act, 1994 within a period of 15 days from the grant of permission under Section 233.

The writ petition is allowed as above.

Sd/-

N. NAGARESH, JUDGE

aks/03.07.2023

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APPENDIX OF WP (C) 11840/2023

PETITIONER'S EXHIBITS

- Exhibit P1 A TRUE COPY OF THE LETTER OF INTENT ISSUED BY THE COMPETENT AUTHORITY UNDER THE PROVISIONS OF RULES 2015, DATED 19/09/2017
- Exhibit P2 TRUE COPY OF THE RELEVANT PAGE OF THE APPROVED MINING PLAN WHICH BEARS THE ENDORSEMENT
- Exhibit P3 TRUE COPY OF THE ENVIRONMENTAL CLEARANCE ISSUED BY THE COMPETENT AUTHORITY BEARING NO. A/1199/18/DEIAA DATED 25/04/2018
- Exhibit P4 TRUE COPY OF S.O. 221 (E) DATED 18/01/2021
- Exhibit P5 TRUE COPY OF S.O. 1807 (E) DATED 12/04/2022
- Exhibit P6 TRUE COPY OF THE CONSENT TO OPERATE ISSUED BY THE COMPETENT AUTHORITY BEARING NO. PCB/KSRD/ICO/2113/2018 DATED 16/06/2018 VALID UPTO 31/05/2023
- Exhibit P7 TRUE COPY OF THE EXPLOSIVE LICENSE BEARING NO. E/SC/KL/22/1638(E6-1061) DATED 09/02/2023, VALID UP TO 31/03/2027 GRANTED BY THE COMPETENT AUTHORITY
- Exhibit P8 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR PERMISSION AS CONTEMPLATED U/S 233 OF THE ACT, 1994 IS DATED 02/03/2023
- Exhibit P9 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR LICENSE AS CONTEMPLATED U/S 232 OF THE ACT, 1994 DATED 17/02/2023
- Exhibit P10 TRUE COPY OF THE ACKNOWLEDGMENT RECEIPT SHOWING THE SUBMISSION OF THE EXT. P9 APPLICATION ISSUED BY THE 1 ST RESPONDENT

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Exhibit P11 TRUE COPY OF THE DEMAND DRAFT NO.
000480000 DATED 02/03/2023 DRAWN FOR
AN AMOUNT OF RS. 20,680/- TOWARDS
LICENSE FEE, ISSUED BY KERALA GRAMIN
BANK, VELLARIKKUNDU BRANCH,
Exhibit P12 TRUE COPY OF THE DECISION BEARING NO.
5/2 DATED 24/3/2023 BY THE 1 ST
RESPONDENT

RESPONDENT'S EXHIBITS

EXHIBIT R1(a) Copy of complaint submitted by
Rijosh.M.J dated 15.03.2023 before the
Panchayath
EXHIBIT R1(b) True copy of the letter seeking
clarification dated 16.03.2023
submitted by Panchayath to District
Collector
EXHIBIT R1(c) True copy of the Panchayath resolution
dated 24.03.2023

