

**Presented on: 09. 12.2021**

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING  
AT CHENNAI**

**Application No. 142 of 2020**

Renny Jacob George : Petitioner

Vs.

Kerala State Pollution Control Board  
& others : Respondents

**COUNTER AFFIDAVIT FILED BY THE 8<sup>th</sup>  
RESPONDENT**

P.HARIDAS (K/142/1992),  
BIJU HARIHARAN (K/ /1995)  
SHIJIMOL MATHEW (K/907/2005)  
SHIJIN P.C. (K/397/2012)&  
RISHIKESH HARIDAS (K/630/2018)

**M/s.CHERIAN & HARIDAS  
ADVOCATES**

K.K. Padmanabhan Road,  
Kochi – 682 018  
Counsel for the 8<sup>th</sup>respondent

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Dated this the 9<sup>th</sup> day of December, 2021

  
 P. Haridas  
 Counsel for the 8<sup>th</sup> Respondent

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING  
AT CHENNAI**

**Application No. 142 of 2020**

Renny Jacob George : Petitioner

Vs.

Kerala State Pollution Control Board  
& others : Respondents

**COUNTERAFFIDAVIT FILED BY THE 8<sup>th</sup> RESPONDENT**

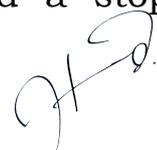
I, Naveen Mathew Philip, aged 39 years, Thekkenedumplackal House, Mallappally West P.O., Mallappally Taluk, Pathanamthitta District, Pin:-689585, do hereby solemnly affirm and state as follows:

1. I am the 8<sup>th</sup> respondent in the above application and I am well conversant with what all stated hereunder.
2. The application is outside the scope of jurisdiction of this Hon'ble Tribunal. If at all maintainable it is barred by limitation.
3. All the contentions in the application saving those expressly admitted hereunder are false and are hence denied.

 N. M. P.



4. It is submitted that the application is not maintainable either in law or on facts but filed with malafide by my business rival.
5. It is submitted that the applicant is having business and financial interest in the granite quarry and crushing unit named M/s. Shanio Crushers wherein his uncle, Sri. A.J. Abraham, is the Managing partner. This application has been filed with a view to close down my quarry and to take over the same at a throw away price, so that applicant can annexpetitioner's property with his adjacent properties and to establish a large mining site.
6. It is submitted that in order to achieve his goals, applicant and another who wanted protection money filed WP(C) No. 39189/2015 before hon'ble High Court of Kerala and I filed WP(C) No. 2783/2016. The hon'ble High Court permitted me to conduct quarrying operations in one quarry and directed to permit quarrying operation in the second quarry after getting environmental clearance.
7. Thereafter the applicant herein filed WP(C) No. 32820/2016 before hon'ble High Court of Kerala. Pursuant to interim order therein, Environmental Engineer of the pollution control board issued a stop



memo alleging some violations. I filed WP(C) No. 34335/2016 before hon'ble High Court of Kerala challenging the stop memo.

8. Thereafter, I filed WP(C) No. 36538/2016 before hon'ble High Court of Kerala wherein applicant herein was arrayed as 5<sup>th</sup> respondent. In paragraph No.7 of the said writ petition, I pleaded that

*“While so, 5<sup>th</sup> respondent, nephew of Sri A.J. Abraham, Shanio Crushers, who is a business rival of the petitioner, and another who wanted protection money from the petitioner filed W.P.(C) No. 39199 of 2015 against the petitioner’s quarrying operation with ulterior motives.”*

True copy of the memorandum of writ petition in WP(C) No. 36538/2016 before hon'ble High Court of Kerala dated 11.11.2016 is produced herewith and marked as **Annexure R8(a)**.

9. It is submitted that the applicant has intentionally filed a false affidavit giving false evidence by the way of counter affidavit stating that

*“It is not at all true to say that Sri. AJ Abraham is the owner or proprietor of the Shanio Crushers and he is a business rival of the petitioner as stated in paragraph 7 of the writ petition and I strongly deny such averment as bereft of truth”.*

The applicant is legally bound by oath of affirmation in the affidavit to state truth but made the above false statement which known to him as false. True copy of the counter affidavit in WP(C) No. 36538/2016 before hon'ble High Court of Kerala dated 3.12.2016 is produced herewith and marked as **Annexure R8(b)**.

10. It is submitted that Sri A.J. Abraham, uncle of applicant herein, filed WP(C) No.31869/2016 as the Managing Partner of M/s. Shanio Crushers. True copy of the affidavit filed by Sri AJ Abraham in WP(C) No. 31869/2016 before hon'ble High Court of Kerala dated 29.9.2016 is produced herewith and marked as **Annexure R8(c)**.

11. Under the said circumstances, I have filed application before hon'ble High Court of Kerala under Section 340 of the Code of Criminal Procedure seeking to prosecute the applicant for commission of offences under Section 191 r/w section 193 of Indian Penal Code.

12. The applicant has filed WA No. 583/2017 and WA No. 699/2017 before the Hon'ble High Court of Kerala in this subject matter seeking very same relief. Suppressing the same this application has been filed. On that ground alone this application is liable to be dismissed.

13. The contention in Para No. 1 that the applicant is doing agriculture the property adjacent to the quarry for

 L.P



livelihood is incorrect. Applicant is minting money by running benami quarry and crusher. Rest of the contentions in Para No. 1 to 3 are only factual hence denied.

14. The application is beyond the scope of the jurisdiction of this Hon'ble Tribunal, since the subject matter is not a civil case where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule 1 of National Green Tribunal Act, 2010 as contemplated in section 14 of the said act. The subject matter and reliefs claimed for are issues squarely covered by Mines (Development and Regulation) Act, 1957 (hereinafter referred to as MMDR Act) and Kerala Minor Mineral Concession Rules, 2015, which are not included in the schedule 1 of National Green Tribunal Act. There are appropriate mechanisms under the said act and rules to redress all grievances of the applicant, if any, which he is trying to redress invoking forum of the NGT.

 L.P.



15. There is no violation of any specific statutory environmental obligation that gives rise to any substantial question of law so as to invoke jurisdiction of NGT.

16. It is submitted that contention in Paragraph No. 4 are incorrect. It is submitted that the quarry was opened in the subject matter property by my father in the year 1979. Till his death on 26.02.2009, he was operating the quarry. It is submitted that Annexure A1 quarrying lease was issued much prior to promulgation of Environmental Impact Assessment Notification (EIA notification). Though A2 quarrying lease was after issuance of EIA the applicability of EIA and its impact was only subject to judgment of Hon'ble apex court in **Deepak Kumar's** case reported as **(2012 ) 4 SCC 629** and that of Hon'ble High court of Kerala in **All Kerala River Protection Council** reported as **ILR 2015 (2) Kerala 409/ 2015 (2) KLT 78**. Hence the contention that issuance of quarrying lease is bad and punishable are incorrect. There is no violation of any provisions of environmental protection act either by me or the 2<sup>nd</sup> respondent. Hence section 15 of environmental protection is not at all applicable in this matter. If at all all the allegations levelled by the applicant

are proved, at the best it may come within the scope of MMDR Act and MMC Rules. At any rate it would not come within the scope of Environmental Protection Act. The Contentions contrary in Para No. 5 are unsustainable.

17. Contentions in para No.6 also is misleading. The applicant has filed WP(C) No. 39189/2015 before hon'ble High Court of Kerala, seeking 8<sup>th</sup> respondent shall not operate quarry without environmental clearance. It is submitted that by that time I stopped quarrying in those property and proposed to resume quarrying only after obtaining environmental clearance. I stopped mining in the area covered by Annexure 1 on 16.03.2016 and stopped mining in area covered by Annexure 2 on 31.3.2015. Though the Hon'ble High Court permitted me to continue quarrying in property covered by Annexure 1, I maintained that quarrying will be resumed only after obtaining environmental clearance.

18. Contentions in Paragraph No. 7 are also incorrect. Even prior to Annexure 5, I have taken steps to get environmental clearance. Preparation of mining plan etc. is going on. I have also acquired adjacent properties so as to maintain safe distance as per norms. It is incorrect to

say that I have abandoned the quarries and there are two mining pits lying dangerously. If the applicant has got any complaint regarding Annexure 5 judgment, he has to approach the Hon'ble High Court, not this Hon'ble Tribunal. There is no indiscriminate unscientific mining. It is submitted that the quarrying in the property was commenced in the year 1979. Depicting that such mining as done by me is unsustainable. Though mining was started much earlier, periodical renewal of lease and consent by pollution control board were given only after site inspection by the competent authority.

19. Contentions in paragraph No. 8 are incorrect. The applicant filed WP(C) No. 32820/2016 before hon'ble High Court of Kerala raising various contentions including those raised in this application. The Hon'ble High Court was pleased to pass Annexure 6 judgment finding that the circumstances complained in the writ petition did not survive. However the applicant filed WA No. 583/2017 and WA No. 699/2017 before the Hon'ble High Court of Kerala for relief similar to that sought in this application. This application was filed suppressing the filing and dependency of the said writ appeals. Applicant is not prosecuting the

 L.P.



said writ appeals only because I filed affidavit in the said writ appeals alleging perjury and the applicant is apprehending penal consequences.

20. Contentions in para No.9 is also incorrect. Annexure 7 photographs are concocted. The very same photographs and Annexure 8 report were produced and same contentions were raised in WP(C) No. 32820/2016. However the hon'ble high court has repelled the contentions and found that the allegations did not survive. The said report was prepared even without notice to me and is having no evidentiary value. I am not dumping any M-sand wastes and there is no overflow to *Mannath Thodu*.

21. Contentions in paragraph No. 10 are also incorrect. The colour of the water is not discernable from the photographs. It does not speak about dumping of any M-sand or crushing waste into the pit. The bluish-green colour does not indicate whether the water is surface water or ground water.

22. The contentions in paragraph no. 11 are also incorrect.

The allegation that the mining pits turned in to lakes of



ground water are incorrect. The Google image is having no relevance. Depth also cannot be estimated from it.

23. Contention in paragraph no.12 are also incorrect. I have not permanently stopped the quarrying operations in the property, but suspended it till the receipt of environmental clearance. The mines are not at all closed. The lower level of the mine cannot be depicted as a pit. Since the rock and the mining area is at a higher level and because the mining started from the lower level, applicant is depicting it as a pit. I am not bound to reclaim the pit or plant saplings there before closure of the mine. There is no danger to public safety or ecology.

24. The contentions in paragraph no.13 are also incorrect. Applicants himself may prove the existence of deity and custom of lighting lamps. The water used for washing the M-sand has never been pumped back to the water body and as such there is no overflow either to *Mannathu Thodu*, creek or *Manimalar* river. It is the normal procedure to issue notice on a complaint. Hence, Annexure A11 does not assume much importance. The complaint led to A11 is concocted by the applicant.

 L.P



25. Contentions in paragraph no.14 are also irrelevant. I have not closed the mine. The operations are only suspended temporarily till I get Environmental Clearance. The decision cited therein is having no application in the instant case.

26. Contentions in paragraph no.15 are incorrect. I have not quarried or continued quarrying below the permissible levels. It is incorrect to say that the mining pits have turned in to lakes of ground water. The colour of water is not of the indication of the nature of water. I am not bound to reclaim the pits since I have not stopped the mining operations. The decisions cited therein are not applicable in the instant case.

27. The contentions in paragraph no.16 are incorrect. Petitioner has not done any illegal mining. The decisions cited by the petitioner in the said paragraph is not at all applicable in the instant case. Petitioner has not conducted any illegal mining. Petitioner has not done any mining any area outside the leased area. The competent authority has regularly inspected the mine and ensured that there is no illegal mining. Whenever there was some excess extraction, it was compounded upon me paying

 L.P



royalty and compounding fee. Hence, I am not liable to pay any compensation to the state. Applicant is not having any privity or *locus standi* to claim compensation for the state.

28. Contentions in paragraph no.17 are also incorrect. I am not conducting any illegal mining or earth from the property. The *Janadhipathya Samrakshana Samithi* is a name lender Organisation of a person who has been extracting money from businessmen by filing vexatious litigations against them. The overburden was removed pursuant to directions in Annexure 6 judgment in order to avoid the collapse of overburden and to avert the danger. I have paid the royalty as demanded. Therefore, such removal became legal. Furthermore, it is beyond the scope of jurisdiction of this hon'ble tribunal. Hence, Annexure 12 assumes no relevance. Annexure 13 also is not connected with the subject matter.

29. The contentions in para. 18 are also incorrect. The EIA notification is only subject to finding of the hon'ble apex court in Deepak Kumar's case and that of hon'ble High Court of Kerala in **All Kerala River Protection Council v. State of Kerala & Ors.** reported as **ILR 2015 (2) Kerala 409/2015 (2) KLT 78.** I have not conducted any

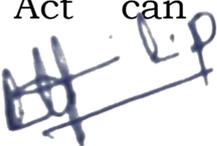
quarrying in violation of the same and no quarrying operation was done in properties covered by Annexure 2 since 31.3.2015 and no quarrying operations was conducted in properties covered by Annexure 1 since 16.3.2016. Hence, petitioner has not violated Environmental Protection Act. The allegation does not constitute any prohibitory act to attract prosecution under section 19 of the Environment Protection, Act. If at all any offence has been committed, prosecution can only be initiated by the competent authority and also in the manner prescribed under Section 19 of E.P.Act.

30. Contentions in paragraph.19 are incorrect. Issuance of quarrying leases were much prior to notification dated 14.03.2017. There is no infringement in issuance of Annexure 2 quarrying lease and no action can be taken against me or 6<sup>th</sup> respondent.

31. Contention in paragraph no. 20 are also irrelevant. The non-issuance of consent by Pollution Control Board was improper. That is why the hon'ble High Court of Kerala has issued Annexure 14 judgment. The applicant cannot pray this hon'ble tribunal to revisit Annexure 14 judgment.



32. Contentions in paragraph no. 21 are also incorrect. The subject matter of A15 does not require any prior environmental clearance.
33. Contentions in paragraph no. 22 are also irrelevant. Since there is no legal requirement to get environmental clearance, the environmental engineer committed no illegality. The applicant has not challenged Annexure 16.
34. Contentions in paragraph no. 23 are only factual. The applicant has not challenged Annexure 17. Hence the applicant is precluded from raising any contentions against Annexure 17.
35. Contentions in paragraph no. 24 are also misleading. Annexures A4, A16 and A17 were not issued overlooking provisions of EIA notifications. No prior environmental clearance was required. All the quarries and crushers of the state including M/s. Shanio Crushers, the quarry and crusher run applicant's benami, also was running without prior environmental clearance. Applicant or his name lender uncle did not even apply for the same. The officers cannot be prosecuted for the issuance of consent. Furthermore, initiating action under Section 15 of the E.P. Act can only be in accordance with procedure



contemplated under Section 19 of the said act and applicant is having no locus standi.

36. Contentions in paragraph no. 25 are also incorrect. I have not treated the quarry as closed. The operations were temporarily suspended till receipt of environmental clearance. The allegations made by the petitioner is touching only provisions of MMDR Act and KMMC Rules. The said Act and Rules are self-contained codes and appropriate mechanisms are provided for redressal of grievances. The forum of this hon'ble tribunal cannot be used for redressal of such grievances. It is an abuse of process of court and beyond the scope of jurisdiction of this hon'ble tribunal.

37. Contentions in paragraph no. 26 are also irrelevant. The decision cited therein are also not applicable in the instant case.

38. The application is barred by limitation. The limitation explained by the applicant is incorrect. The applicant is trying restitution of a mine started in 1979 and seeking its reclamation. Applicant also is seeking to quantify the granite stone extracted since 22.2.2008 and seeking a direction to the Geologist to recover the same. Hence,

 L.P.



starting point of limitation is from 1979 as well as from 22.2.2008. Hence, it is not within the period of limitation prescribed under section 15(3) of NGT Act. The date on which quarrying operations were temporarily suspended also cannot be treated as starting point of limitation. Furthermore, the relief sought for are also time barred by law of limitation.

39. The prayers sought for in the application are not maintainable.

40. Prayer 1 cannot be granted because petitioner has not stopped the quarrying but proposed to quarrying after obtaining environmental clearance. For such a relief there are mechanism under MMDR Act and KMMC rules and is beyond the scope of jurisdiction of this Hon'ble Tribunal. There is a scheme for closure of quarries under chapter VI of the Kerala Minor Mineral Concession Rules, 2015. Hence there is no room for NGT to invoke its jurisdiction.

41. Prayer No. 2 also is not allowable because it is also covered by mechanism of MMDR Act and KMMC rules.

42. Prayer No. 3 is not allowable because me and respondent 1 to 7 have ensured that no such discharge of waste to

 L.P.



nearby creek and land. Furthermore applicant has not alerted to respondents 1 and 2 regarding such discharge.

43. Prayers Nos.4 to 6 are also not maintainable. A prosecution under Section 19 of the Environmental Protection Act can be initiated only in accordance with the mandate of Sec.19. The prayer is opposed to the scheme of sec.19. This Hon'ble tribunal is having no jurisdiction to issue such direction and to interfere with the discretion of the competent authority. Furthermore, the issuance of quarrying lease without environmental clearance is not culpable or penal under Environmental Protection Act.

44. Prayer No.7 also is not maintainable because petitioner has not done any mining without valid lease. Petitioner extracted mineral from a leased quarries by paying royalty. No further amount can be recovered from the petitioner. If at all any amount can be recovered, there is appropriate mechanism under MMDR Act and KMMC rules and is beyond the scope of jurisdiction of this Hon'ble Tribunal.

45. If at all there is excessive mining there is penal provision under 108 of the Kerala Minor Mineral Concession Rules, 2015 and there is also provision for compounding of offences punishable under the said rules under Rule 111.

 L.P.



There is no scope for NGT to invoke its jurisdiction. The recovery of such amount by the competent authority also is subject to the Limitation Act, 1963 and no amount prior to preceding 3 years can be recovered.

46. The compensation or restitution under section 15 of the NGT Act cannot be invoked by the applicant since he is not a victim as contemplated under section 15 of NGT Act.

47. The 8<sup>th</sup> respondent has not submitted the application within 5 years as contemplated under 15(3) of the NGT Act. The claim of the applicant is for damages and restitution for the mining since 2005.

48. The Hon'ble High Court of Kerala by judgment in WP(C) No.39189/2015 and WP(C) 2783/2016 permitted the 8<sup>th</sup> respondent to excavate in 1.0183 hectares covered by quarrying lease dated 18.11.2015 and permitted the 8<sup>th</sup> respondent to resume quarrying in 5.19.6 hectares covered by quarrying lease dated 22.02.2008. However, I resolved to resume quarrying work only after getting environmental clearance of both the areas. Hence, there was no quarrying since 2016. The applicant has filed W.A. 583/2017 and W.A. 699/2017. When the perjury committed by the applicant was brought to the notice of

 L.P.



the division bench, the applicant has not pursued these writ appeals. The same are yet to be admitted. Hence, the applicant conveniently opted another route by using the forum of this hon'ble tribunal, which is abuse of process of court.

49. 8<sup>th</sup> respondent proposed to resume quarrying after getting environmental clearance. Hence, there is no circumstances for the closure of the quarry and the NGT cannot order closure of the quarry.

50. Father of the 8<sup>th</sup> respondent has started quarrying in the site since 1979. 8<sup>th</sup> respondent started quarrying only in the year 2009. However, the attempt of the applicant is to depict the quarrying since 1979 as illegal mining done by 8<sup>th</sup> respondent. The interim orders of this hon'ble tribunal, findings therein and constitution of a committee to assess the quantum of damages alleged to have been caused is without jurisdiction and having the effect of alleging that petitioner commenced mining since 1979 and liable for alleged damages. It is obvious that there was quarrying since 1979 and substantial excavations were done before 8<sup>th</sup> respondent has taken over the quarry in 2009. This

~~At L.P~~

At

hon'ble tribunal has not appreciated that 8<sup>th</sup> respondent has started quarrying only in September 2009.

51. Periodical inspection and audit was done by the competent authority and penalty and royalty for any excessive mining was already levied from the 8<sup>th</sup> respondent. Hence, no further penalty or damages can be imposed upon the 8<sup>th</sup> respondent by this hon'ble tribunal.
52. The relief for compensation and damages are barred by limitation. If at all any excessive mining was done, no penalty or damages can be recovered for the period prior to 3 years.
53. The mining by the 8<sup>th</sup> respondent has not caused any adverse impact on the environment. He commenced and continued quarrying after obtaining all the necessary permissions and following all the statutory requirements.
54. This hon'ble tribunal passed an order on 07.08.2020 without hearing me and even before issuing notice to me. It was ordered to constitute a joint committee for local inspection and to file a report. Several adverse findings were made therein. The said order and findings are in gross violation of principles of natural justice and without

 L.P



jurisdiction. I reserve my right to challenge the order dated 07.08.2020.

55. The committee constituted by the order dated 07.08.2020 is having no authority or jurisdiction to conduct inspection and file a report also because the constitution of the joint committee is without jurisdiction and in violation of principles of natural justice. The finding of the committee is incorrect in law and on facts. The committee has treated the entire area quarried since 1979 as if quarried by me recently and thrust the liability of such mining upon me. The quantification also is without any scientific or mathematical support, but only a guess work animated by fiction and beyond any logical comprehension. The bureaucrats took the order of this hon'ble tribunal as a handle to harass the 8<sup>th</sup> respondent by imposing penalty upon him. I shall file a detailed objection against the report of the joint committee.

56. Hence, proceedings before the hon'ble NGT is without jurisdiction and liable to be dismissed.

57. The applicant is liable to pay cost for filing this application with *malafides* to reap undue advantage for





his granite quarry and crusher by crushing petitioner's establishment by abusing process of this hon'ble tribunal.

Under the circumstances, this Honourable tribunal may be pleased to dismiss this application with the cost

All the facts stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 9<sup>th</sup> day of December, 2021

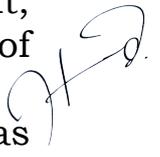


DEPONENT

Solemnly affirmed and signed before me by the deponent, who is personally known to me on this the 9<sup>th</sup> day of December, 2021 in my office at Ernakulam.

P.Haridas

Advocate



Annexure KB (a)  
o/c

Presented on- 11.11.2016

Sub: - Minor Mineral Concession Rules - Non- consideration of issuance of transit passes & Non-inspection by respondents 3&4 to ascertain the quantum of mineral to be removed.

BEFORE THE HONORABLE HIGH COURT OF KERALA  
AT ERNAKULAM

W.P. (C) No. 36358 of 2016

Naveen Mathew Philip : Petitioner

vs.

The State of Kerala & others : Respondents

**WRIT PETITION (CIVIL)**  
**FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

C.F. Rs.100/-

CHERIAN GEE VARGHESE (C 111)  
P.HARIDAS (H-21),  
DIVYA K NAIR (D-288)  
SHIJIN.P.C (S-2736)  
ROSHIN MARIAM JACOB -(R-3232)  
M/s. CHERIAN& HARIDAS  
ADVOCATES  
VARIKKAMANKAL SHREEMERU, PADAM ROAD,  
VADUTHALA P.O. KOCHI - 682 023.  
COUNSEL FOR THE PETITIONER.

BEFORE THE HONORABLE HIGH COURT OF KERALA  
AT ERNAKULAM

W.P. (C) No. 36358 of 2016

Naveen Mathew Philip : Petitioner  
vs.

The State of Kerala & others : Respondents

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*Handwritten signature*



A  
BEFORE THE HONORABLE HIGH COURT OF KERALA  
AT ERNAKULAM

W.P. (C) No.                      of 2016

Naveen Mathew Philip                      :     Petitioner

Vs.

The State of Kerala & others                      :     Respondents

**Synopsis**

The petitioner is running a rock crushing and mineral sand unit with all requisite permissions. The unit has been installed in a quarry which is not function now. The solid waste is being processed and sold as filling materials. No waste from crusher is being stacked. The overburdens so stacked were properly protected to avoid any landslide or erosion. P 3<sup>rd</sup> respondent mistook the stacked overburden as a waste from the crusher and has issued Ext P10 stop memo. The petitioner challenged the same in WPC 34335/2016. An Advocate Commissioner visited the property as directed by this Honourable Court. It was reported the chances of soil of erosion in the case of heavy rain and also regarding non-compliance of a condition in the consent. Petitioner has made certain modifications and also sends Ext.P-14 & Ext.P-15 for respondents 3 &4 respectively seeking directions regarding modifications and for fixing the quantum of soil to be removed and also sought for transit passes from 4<sup>th</sup> respondent in the event of finding that soil has to be removed. Since the respondents 3&4 has not taken any action this writ petition has been filed.

Dated this the 11<sup>th</sup> day of November, 2016.

sd/  
Counsel for the petitioner

*Handwritten signature*

BEFORE THE HONORABLE HIGH COURT OF KERALA  
AT ERNAKULAM

WP(C). No. of 2016

Petitioner:

Naveen Mathew Philip, S/o Philip Mathew, aged 31,  
Thekkenedumplackal, Mallappally West, Pathanamthitta  
District

Respondents:

1. The State of Kerala, represented by the Secretary,  
Department of Environment & Forest, Government of  
Kerala, Thiruvananthapuram-695 001
2. The Kerala State Pollution Control Board,  
Thiruvananthapuram-695 001
3. The Environmental Engineer, Kerala Pollution Control  
Board, Pathanamthitta- 689 645
4. Geologist, Department of Mining and Geology,  
Pathanamthitta- 689645
5. Reny Jacob George, Ponthottiyil House, Vannathchira  
PO, Kavilumpara, Kozhikode District, Pin 673 513.

WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF  
THE CONSTITUTION OF INDIA

The address for services of all notices and process to  
the petitioner is that of his Counsel Cherian Varghese,  
P.Haridas, Divya K Nair, Shijin P.C., and Roshin Mariam  
Jacob, M/s Cherian & Haridas, Advocates, Varikkamankal  
Shree Meru, Padam Road, Vaduthala P.O., Kochi - 682 023  
and that of the respondents is as shown above.

STATEMENT OF FACTS

- 1) It is submitted that the petitioner is running a rock  
crushing and mineral sand unit with all requisite  
permissions. The solid waste is being processed and sold  
as filling materials. No waste from crusher is being  
stacked.

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- 2) The crushing unit has installed within a quarry which originally started by the father of the petitioner during early in 1980's. The quarry is not functioning presently. While the quarry was functioning, a road was formed using the overburden which can later use for filling the quarry on its closure. True copy of the location sketch of the crushing and minerals unit is produced herewith and marked as **Exhibit P-1**.
  - 3) There is an adjacent quarry having an extent of 1.0183 Hectares, which is having valid lease, permit and licence. But the same is not being put to use at present due to economic reasons.
  - 4) The raw materials are being procured from a quarry 6 km away and having environmental clearance owned by a firm, in which the petitioner is also a partner.
  - 5) The business of the petitioner was originally started by his father Philip Mathew in the property owned by him who was having two different quarrying lease with respect to two different quarries. A quarry having extent of 1.0183 hectares is covered by quarrying lease dated 18.11.2005 valid up to 17.11.2017. Adjacent quarry having an extent of quarrying lease dated 22.2.2008 valid up to 21.2.2020.
  - 6) After the death of the petitioner's father, the business devolved upon the petitioner, his mother Mary Philip and sister Niya Sara Philip. They executed a transfer of lease deed dated 20.1.2010 in favour of the petitioner. As per the request of the legal heirs, the quarrying lease was transferred in the name of the petitioner by the Director of Mining and Geology (LC), Thiruvananthapuram vide proceedings No. 325/2009-10/7023/M3/2009 dated 24.9.2009. Petitioner is having valid explosive license and licenses from the local authority. Petitioner obtained

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consent to operate the quarry, crusher and mineral sand granite from the 3<sup>rd</sup> respondent. True copy of the Consent to operate mineral sand unit dated 28.2.2013 is produced herewith and marked as **Exhibit P-2**. True copy of the Consent to operate the stone quarry dated 12.6.2008 is produced herewith and marked as **Exhibit P-3**. Later, the same was renewed from time to time. Now it has been renewed on 11.11.2014. The renewed integrated consent to operate the stone quarry is produced herewith and marked as **Exhibit P-4**. The local authority also has issued license under 'D & O' Rules. True copy of the license dated 29.4.2015 under D&O Rules is produced herewith and marked as **Exhibit P-5**. Petitioner has already taken steps to get environmental clearance. True copy of the work order dated 3.7.2015 is produced herewith and marked as **Exhibit P-6**.

- 7) While so, 5<sup>th</sup> respondent, nephew of Sri. A.J. Abraham, Shania Crushers, who is a business rival of the petitioner, and another who wanted protection money from the petitioner filed W.P. (C) No. 39189 of 2015 against the petitioner's quarrying operations with ulterior motives. The petitioner also filed W.P. (C) No. 2783 of 2016. This Honourable Court directed to permit the petitioner to conduct quarrying operations in the area covered by Ext P2 and also to permit him to conduct quarrying in the area covered by Ext P3 only after getting environmental clearance. True copy of the common judgment dated 16.3.2015 is produced herewith and marked as **Exhibit P 7**. However the petitioner ceased to operate both the quarries since it is not viable economically.
- 8) It is submitted that the quarrying operations were started by the petitioner's father about two decades ago. The

overburden and top soil used to form a pathway on the eastern quarter of the entire property. The said road and link between the portion of the quarry wherein the crushing and mineral sand units situate. The overburden so stacked was properly protected by construction of granite wall on the eastern side to avoid any erosion or landslide. The eastern boundary of the properties is further 40 metres away from the aforesaid road and the boundary has been protected by granite walls to avert any soil erosion and landslides. The road was so formed nearly six or seven years back and no new soil, waste or byproducts of crushing and mineral sand unit are being dumped over the said portion. The road formed became hard because it has been formed by using the soil of the quarry. There is no chance for any erosion or landslide. The soil so deposited over the road formed became hard and naturalized by all sorts of shrubs and grass grown over the same. Vehicular traffic in earlier time contributed to the firmness of the road portion.

- 9) The eastern boundary of the property is further 40 metres away from the road portion and granite wall has been constructed there to prevent any accidental erosion. The granite wall was constructed at the time when overburden and byproducts were being stocked.
- 10) It is submitted that the crusher has been installed in environmental friendly manner. It situates amidst lush greenery. The crusher has been completely covered and all protective measures have been taken. The safety system is being used for averting the dust of machines as directed by the Pollution Control Board.
- 11) The byproducts from the crusher unit is being used in the minerals units and the waste/slurry is collected and

- dried in the drying yard and is being sold as filling materials for construction purpose.
- 12) It is submitted that no effluents are being discharged outside the premises. Even heavy rains also, there is no chance for any waste being washed away and for being deposited in any neighboring property.
- 13) Earlier on 26.4.2016 the 3<sup>rd</sup> respondent issued notice to the petitioner alleging certain violation. The petitioner cured the defect by enclosing sand crusher unit and explained that the petitioner is not depositing any sand wash waste as alleged True copy of the reply letter dated 9.5.2016 issued by the petitioner to the 3<sup>rd</sup> respondent is produced herewith and marked as **Exhibit P-8**.
- 14) While so, 5<sup>th</sup> respondent filed W.P.(C). No. 32820/2016 before, this Honourable Court alleging that the petitioner is dumping mineral sand waste near his property causing damage. It is submitted that the petitioner has not so far dumped any waste from the crusher and mineral sand unit as alleged.
- 15) The formation of the road using the overburden of the quarry was done for more than 6 years back. Nothing has been generated from the quarry and also mineral sand unit. The final byproducts of quarry is being used as the filling material as in the case of bitumen from refined petroleum. However this Honourable Court was pleased to pass an interim order directing the 3<sup>rd</sup> respondent to inspect and verify the unit and to stop the operation immediately in the event of non-compliance of consent to operate. True copy of the order dated 13.10.2016 in W.P. (C) No. 32820 of 2016 is produced herewith and marked as **Exhibit P9**.

- 6
- 16) Thereafter the 3<sup>rd</sup> respondent issued a stop memo to the petitioner alleging that though the petitioner has complied with other conditions, the soil dumped was not removed and hence to stop the operation of the crusher. True copy of the stop memo dated 20.10.2016 which was issued only on 20.10.2016 is produced herewith and marked as **Exhibit P10**.
  - 17) It is submitted that Ext. P10 is issued without appreciating that the portion referred to therein as waste from the crusher is not at all any waste or byproduct of the crusher of mineral and sand unit but it is the road which was formed by depositing the soil arisen from removal of overburden while the quarry was operational. The three photographs showing the aerial view of the crusher and mineral sand units, the quarry and stack of the overburden and properties of the 5<sup>th</sup> respondent is produced herewith and marked as **Exhibit P11, Ext P11(a), and Ext P11(b)**. It is submitted that Ext. P10 is without hearing the petitioner and without notice to the petitioner.
  - 18) More than 150 persons are working in the crushing unit and they will be rendered jobless leaving their family to starvation. The petitioner has availed a loan of Rs. 10 Crores to run the crushing unit and an EMI of Rs. 50 lakhs has to be paid. Exhibit P10 order is causing irreparable injury and hardship to the petitioner.
  - 19) Petitioner has stacked the overburden only in terms of Rule 15 of Minor Mineral Concession Rules which is not at all a waste from crushing or mineral sand unit. Though it is not causing harm to anybody, petitioner is ready to remove the same if so directed for which, issuance of passes required from 4<sup>th</sup> respondent under Rule 11 of Minor Mineral Concession Rules. Petitioner

7. RSCA (11)  
filed an application before the 4<sup>th</sup> respondent seeking issuance of transit passes for removing the stacked overburden which he considers to be removed. True copy of the application dated 21.10.2016 is produced herewith and marked as **Exhibit P12**.

- 20) Thereafter, petitioner filed W.P.(C). No. 34335/2016 challenging Ext P10. Petitioner also has filed a commission application therein. The learned Commissioner visited the property and reported that petitioner has not stacked any waste from crusher and mineral sand unit and there is no sign of any land slide or erosion from the stacked overburden and causing of damages to the properties of the 5<sup>th</sup> respondent. However, he reported that during heavy rain, erosion may occur and chances for damages to the properties of the 5<sup>th</sup> respondent cannot be ruled out. It was also reported that the protective wall on the eastern boundaries is not sufficient and thickness of the walls of the enclosure of the crusher unit is not having sufficient thickness. True copy of the report dated 07.11.2016 is produced herewith and marked as **Exhibit P13**.
- 21) The report regarding the chances of erosion and insufficiency of protective wall are incorrect. Insufficiency of the thickness of the enclosure wall is also due to a misconception. The insufficiency noticed was at the roof portion which is not the equipment mentioned in Clause 4 of the Consent. The actual portion required by the Consent was covered by 2 feet thick wall. However, petitioner now has enhanced the thickness to more than 23 centimeters by doing additional work.
- 22) Thereafter, petitioner submitted representation to respondents 3&4 to conduct further inspection and to advice the petitioner regarding the quantum of soil to be

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RS(A) (B)

removed and also regarding the height and thickness of the protective wall that has to be constructed on the eastern side of the overburden. Though Ext P12 is already before the 4<sup>th</sup> respondent, it was further requested to give transit passes in the event of 3<sup>rd</sup> or 4<sup>th</sup> respondents finding any overburden has to be removed. True copy of the representation made by the petitioner before the 3<sup>rd</sup> respondent dated 10.11.2016 is produced herewith and marked as **Exhibit P14**. True copy of the representation made by the petitioner before the 4<sup>th</sup> respondent dated 10.11.2016 is produced herewith and marked as **Exhibit P15**.

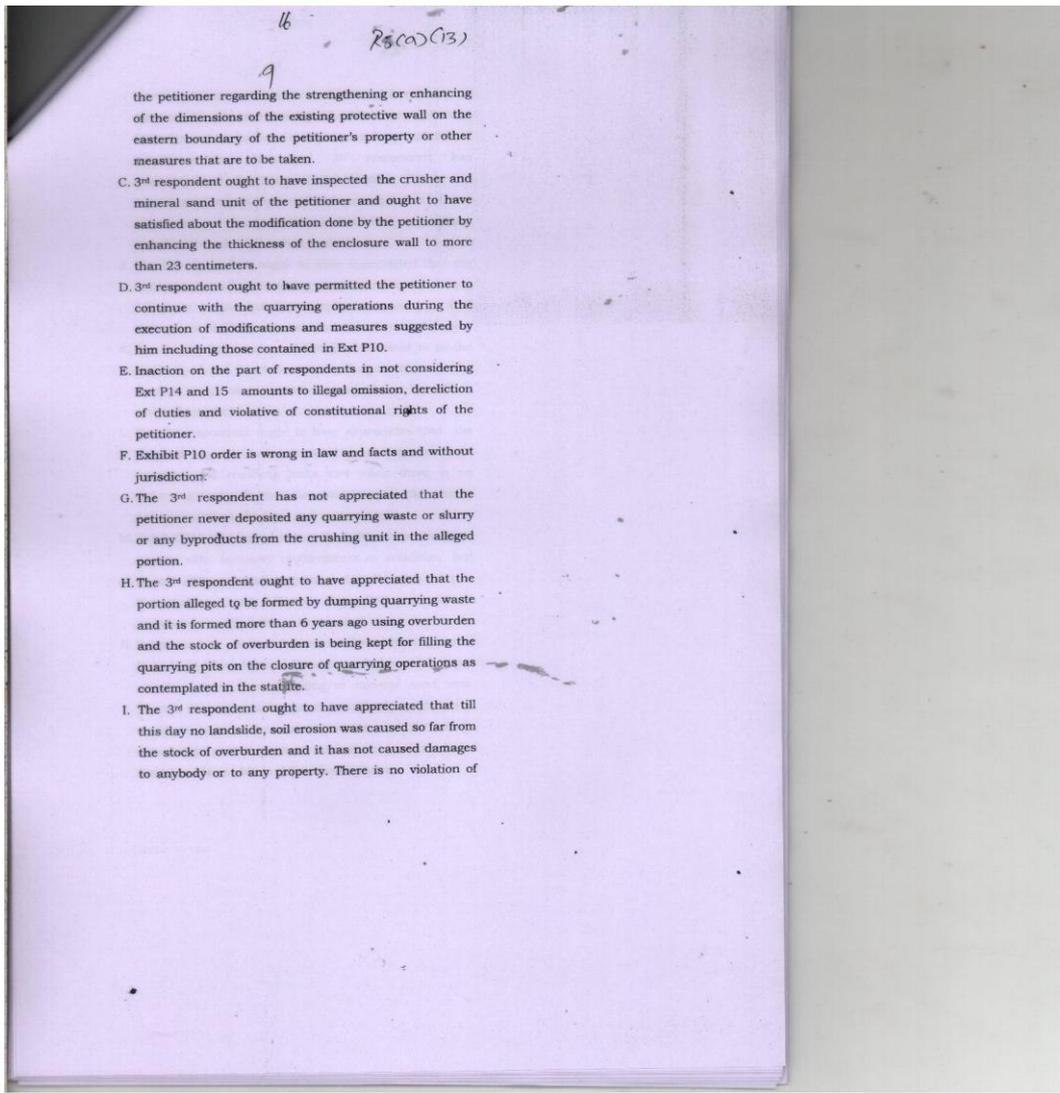
- 23) However, respondents 3 and 4 have not conducted any site inspection of the unit of the petitioner or made any suggestions or directions regarding the measures to be taken and has not considered Exhibits P-14 & Exhibits P-15.

Under the above circumstances, the petitioner is left with no other alternative remedy than to approach this Honourable Court under Article 226 of the Constitution of India, on the following among other:

#### GROUNDS

- A. The respondents 3& 4 ought to have considered Ext P12 Ext.P-14 and Ext.P15 applications, conducted site inspections and ought to have directed the petitioner to what all modification in the unit has to be taken and also ought to have advised him regarding the quantity and dimensions of stacked overburden which has to be removed.
- B. Respondents 3&4 ought to have conducted the site inspection of petitioner's unit and ought to have advised

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-17-  
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RSC (C14)

any conditions contained in Exhibit P2 consent to operate. The directions of this Hon'ble Court in Exhibit P9 judgment are to issue stop memo only on violation of conditions in consent. 3<sup>rd</sup> respondent has misinterpreted directions of this Hon'ble Court and issued stop memo even without any violation of any condition in consent. Hence Ext P10 is without jurisdiction and liable to be quashed.

J. The 3<sup>rd</sup> respondent ought to have appreciated that the entire products from crushing and mineral metal units is being put to use and the waste is being used as final byproducts of filling materials and there is no soil waste.

K. The reason for issuance of Ext. P10 is stated to be the stocking of soil which is not at all a condition in the consent to operate the crushing unit. Hence Ext P10 is without jurisdiction.

L. The 3<sup>rd</sup> respondent ought to have appreciated that the renewed consent is an integrated consent applicable to quarries and crushing units and since there is no quarrying operation, condition pertaining to quarrying is not applicable to crushing and minerals units.

M. Exhibit P10 was issued not on the failure of petitioner to comply with statutory requirements or condition, but issued only on misinterpreting the direction of this Honourable Court. Hence Ext. P10 is without jurisdiction and is liable to be quashed.

N. Petitioner has stacked the overburden only in terms of Rule 15 of Minor Mineral Concession Rules which is not at all a waste from crushing or mineral sand unit. Though it is not causing harm to anybody, petitioner is ready to remove the same if so directed for which, issuance of passes required from 4<sup>th</sup> respondent under Rule 11 of Minor Mineral Concession Rules.

14. The 3<sup>rd</sup> respondent is directed to permit the petitioner to operate the crushing and mineral sand unit with in a reasonable time frame and to maintain the machinery and equipment required for the operation and to ensure that the same is in good working order and to ensure that the same is in good working order and to ensure that the same is in good working order.

15. The Hon'ble Court may direct such other orders as it may deem fit and proper in the facts and circumstances of the case.

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28(a)(15)

O. In order to complete the procedure and to remove any soil petitioner requires some more time and keeping the crushing and mineral sand unit idle for such a period will cause irreparable injury and hardships to the petitioner, his employees and those who are getting indirect employment.

For these and other grounds which may be permitted to be urged at the time of hearing, it is most humbly prayed that this Honourable Court may be pleased to:

- (a) Issue a writ in the nature of mandamus or any other appropriate writ directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents to consider Ext P12, P14 and P15 applications respectively submitted before them and to conduct site inspection and to suggest the protective works and modification that has to be carried out by the petitioner including the quantum and dimensions of the stacked overburden that has to be removed and the dimensions of the wall that has to be constructed on the eastern boundary of the property and the modification that has to be effected on the eastern side of the property and also may direct the 4<sup>th</sup> respondent to issue necessary transit passes to the petitioner for removing the overburden/mineral which has to be removed according to 3<sup>rd</sup> or 4<sup>th</sup> respondents;
- (b) may direct the 3<sup>rd</sup> respondent to inspect the crusher and mineral sand unit and to inspect and satisfy himself about the modifications done by the petitioner by enhancing the thickness of walls of the enclosure is in conformity with the standards;
- (c) may direct the 3<sup>rd</sup> respondent to permit the petitioner to operate crusher and mineral sand unit while he is executing the modifications and protective measures suggested by respondents 3&4 including removal of overburden/mineral and the modification/strengthening of dimension of protective wall on the eastern side of the property of the petitioner;
- (d) Grant such other reliefs as this Honourable Court may deem fit and proper in the facts and circumstances of the case.

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B8 (a) (16)

Interim Relief

For the reasons stated in the above Writ Petition, it is most humbly prayed that this Honorable Court may be pleased to issue a writ in the nature of mandamus or any other appropriate writ directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents to consider Ext P14 and P15 respectively submitted before them and to conduct site inspection and to suggest the protective works and modification that has to be carried out by the petitioner including the quantum and dimensions of the stacked overburden that has to be removed and the dimensions of the wall that has to be constructed on the eastern boundary of the property and the modification that has to be effected on the eastern side of the property and also may direct the 4<sup>th</sup> respondent to issue necessary transit passes to remove the overburden/mineral which has to be removed according to 3<sup>rd</sup> or 4<sup>th</sup> respondents and also may direct the 3<sup>rd</sup> respondent to inspect the crusher and mineral sand unit and to inspect and satisfy himself about the modifications done by the petitioner by enhancing the thickness of walls of the enclosure is in conformity with the standards pending disposal of the above Writ Petition.

Dated this the 11<sup>th</sup> day of November, 2016.

Petitioner  
sd  
(P. Haridas)  
Counsel for the petitioner

All the facts stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 11<sup>th</sup> day of November, 2016.

Notary Public  
District

Subscribed and signed before me by the deponent, who is personally known to me on this the 11<sup>th</sup> day of November, 2016 by my official designation.

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12(A)  
R8(a)(1)

BEFORE THE HONORABLE HIGH COURT OF KERALA  
AT ERNAKULAM  
W.P. (C) No. \_\_\_\_\_ of 2016

Naveen Mathew Philip : Petitioner  
vs.  
The State of Kerala & others : Respondents

**AFFIDAVIT**

I, Naveen Mathew Philip, S/o Philip Mathew, aged 36, Thekkenedumplackal, Mallappally West, Pathanamthitta District, do hereby solemnly affirm and state as follows:

1. I am the petitioner in the Writ Petition(C). I am conversant with the facts of the case.
2. The averments made in the Writ petition(C) are true and correct to the best of my knowledge, information and belief and the same may be read as part of this affidavit.
3. The Exhibits produced along with the Writ Petition (C) are the true copies of its original.
4. Unless the reliefs prayed in the Writ petition(C) are granted, I will be put to irreparable injury, loss and hardships.
5. I have not filed any other writ Petition(C) for the same reliefs earlier.

All the facts stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 11<sup>th</sup> day of November, 2016.

sd  
(Naveen Mathew Philip)  
Deponent

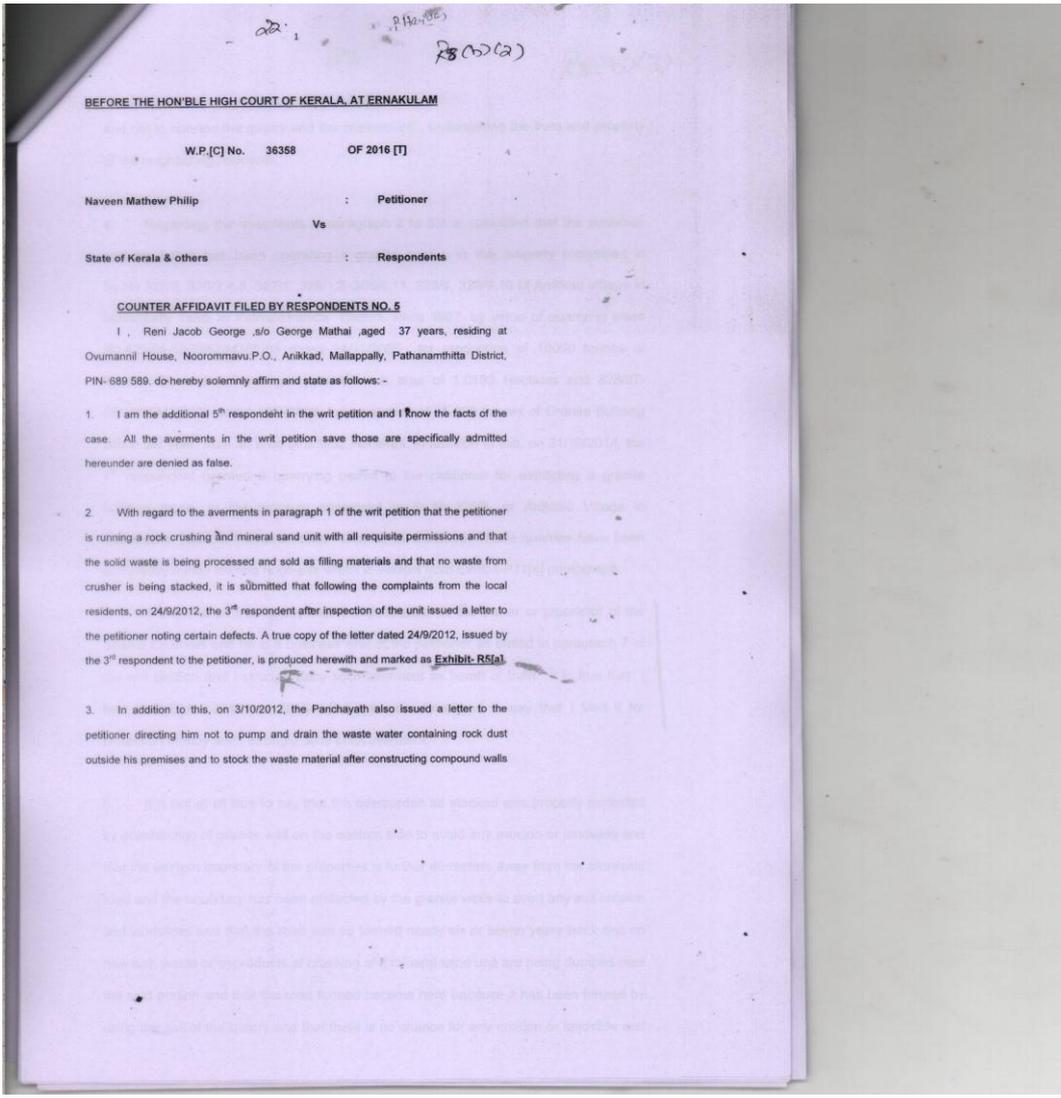
Solemnly affirmed and signed before me by the deponent, who is personally known to me on this the 11<sup>th</sup> day of November, 2016 in my office at Ernakulam.

Sg  
Advocate

I, George (Sg)  
Counsel for respondent No. 1

Hd





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R8(b)(3)

and not to operate the quarry and the crusher unit, endangering the lives and property of the neighboring residents.

4. Regarding the averments in paragraph 2 to 5 it is submitted that the petitioner and his father has been operating a granite quarry, in the property comprised in Sy.No.325/3, 326/2,4,5, 327/1, 325/1,2, 305/6,11, 328/6, 329/9,10 of Anikkad Village in Mallappally Taluk in Pathanamthitta District, since 1997, by virtue of quarrying lease No.425/05-06/8952/M3/2005 dated 14/11/2005 for production of 10000 tonnes of Granite Dimension Stone per year from an area of 1.0183 Hectares and 828/07-08/1053/M3/2008 dated 17/2/2008, for production of 25,000 tonnes of Granite Building Stone per year, from an area of 5.1962 Hectares. In addition to this, on 31/10/2014, the 4<sup>th</sup> respondent granted a quarrying permit to the petitioner for extracting a granite building stone, in the property comprised in Sy.No.325/3, of Anikkad Village in Mallappally Taluk in Pathanamthitta District, till 9/2/2015. These quarries have been completely mined leaving huge pits which is evident from Exhibit-P11[a] photograph.

5. It is not at all true to say that Sri.AJ.Abraham is the owner or proprietor of the Shania Crushers and he is a business rival of the petitioner as stated in paragraph 7 of the writ petition and I strongly deny such averment as bereft of truth. It is true that I filed W.P.[C].NO.39189 of 2015. But it is utter falsehood to say that I filed it for protection money and I strongly deny such averment.

6. It is not at all true to say that the overburden so stacked was properly protected by construction of granite wall on the eastern side to avoid any erosion or landslide and that the eastern boundary of the properties is further 40 meters away from the aforesaid road and the boundary has been protected by the granite walls to avert any soil erosion and landslides and that the road was so formed nearly six or seven years back and no new soil, waste or byproducts of crushing and mineral sand unit are being dumped over the said portion and that the road formed became hard because it has been formed by using the soil of the quarry and that there is no chance for any erosion or landslide and

24 3  
RS (13) (14)

that the soil so deposited over the road formed became hard and naturalized by all sorts of shrubs and grass grown over the same as stated in paragraph 8 and 9 of the writ petition and I strongly deny the same.

7. Regarding the averments in paragraph 10 to 12 it is submitted that none of the directions issued by respondents 3 and 4 had been complied with by the petitioner. Complaints were submitted before the 3<sup>rd</sup> respondent regarding the noncompliance of the directions issued by the 3<sup>rd</sup> respondent. Consequently, on 14/8/2013, another letter was issued by the 3<sup>rd</sup> respondent to the petitioner directing him to operate the crusher unit strictly in accordance with the terms of the consent and not to drain the waste water containing M-sand waste to the nearest stream and to report compliance.

8. With regard to the averments in paragraph 13 it is submitted that I have submitted a complaint before respondents 1 to 4 seeking immediate action to remove the huge mountain of M-sand waste deposited by the petitioner, which is in a dangerous condition, causing severe damage to the agricultural operations in my property. Consequently, on 26.4.2016 the 3<sup>rd</sup> respondent issued Exhibit-P8 notice to the petitioner alleging certain violation. The petitioner did not cure the said defects and continued his illegal activities and it is in such circumstances that I filed W.P.[C].NO.32820 /2016.

9. It is not at all true to say that the Petitioner has stacked the overburden only in terms of Rule 15 of Minor Mineral Concession Rules which is not at all a waste from crushing or mineral sand unit and that it is not causing harm to anybody, as stated in paragraph 19 of the writ petition and I strongly deny the same. If it is the overburden, the petitioner is not entitled to remove the same as it has to be used for filling the deep pits formed as part of the quarrying operations by the petitioner.

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10. None of the grounds raised in the writ petition is maintainable.

These being the facts and circumstances of the case, this Honorable Court may be pleased to dismiss the writ petition, after accepting the contentions of this respondent, in the interest of justice.

What is stated above are true

**Dated this the 3<sup>rd</sup> day of December 2016**

**Deponent: sd/-**

Solemnly affirmed and put the signature before me by the deponent who is personally known to me on this the 3<sup>rd</sup> day of December 2016 at my office at Ernakulam

Sd/-  
**DAISY.A.PHILIPOSE**  
Advocate

// True Copy //

Advocate

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12  
Ext R8(c)

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) NO. 31869 OF 2016

M/s. Shanio Metal Crushers - Petitioner

Vs.

State of Kerala & others - Respondents

AFFIDAVIT

I, A.J Abraham, S/o. A.T. Jacob, aged 53, residing at Azhakanakuzhiyil House, Ayiroor, Ranni Taluk, Pathanamthitta, do take oath and solemnly affirm and state as follows;

1. I am the Managing Partner of the Petitioner in the above case and I am aware of the facts of the case and am competent to swear to this affidavit.
2. All facts stated above are true and correct and Exhibits produced are true copies of the originals. I have not filed earlier petition seeking similar and identical reliefs in respect of the same subject matter.
3. The reliefs prayed for may be allowed.

All facts stated above are true and correct.  
Dated this the 29<sup>th</sup> day of September 2016.

*sq*  
Deponent

Solemnly affirmed and signed before me by the literate deponent who is personally known to me on this the 29<sup>th</sup> day of September 2016 at my office at Ernakulam.

*sq*  
Advocate  
M/A. CHERIAN  
ADVOCATE  
VARKKANAVAL SHREEMATHI, PUNAM ROAD  
VADUTHALA P.O. KOCHI - 682023  
ERNAKULAM THE DISTRICT

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**APPENDIX****8<sup>th</sup> respondent's Annexures:**

**Annexure R8(a):** True copy of the memorandum of writ petition in WP(C) No. 36538/2016 before hon'ble High Court of Kerala dated 11.11.2016

**Annexure R8(b)** True copy of the counter affidavit in WP(C) No. 36538/2016 before hon'ble High Court of Kerala dated 3.12.2016

**Annexure R8(c)** True copy of the affidavit filed by Sri AJ Abraham in WP(C) No. 31869/2016 before hon'ble High Court of Kerala dated 29.9.2016