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BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT CHENNAI

Application No.142 of 2020

Renny Jacob George : Applicant

Vs.

Kerala State Pollution Control Board & others : Respondents

REPLY TO THE COUNTER AFFIDAVIT OF THE 8TH RESPONDENT
FILED BY THE APPLICANT IN THE ABOVE CASE



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I, Renny Jacob George, aged 42 years, S/o. George Mathai, Ovumannil House, Noorommavu P.O., Anicadu, Pathanamthitta District, Pin-689 589, Kerala, do hereby solemnly affirm and state as follows:

1. I am the applicant in the above case and am conversant with the facts of the above case.
2. All the averments in the counter affidavit except those which are specifically admitted hereunder, are denied.
3. The averments made by the 8th Respondent in the counter affidavit are self-contradictory and in misrepresentation of facts. The major contention of the respondent is that this Tribunal has no jurisdiction in the subject matter of the above case and that the applicant has no locus standi to prefer the above case and it has been filed with an malafide intention.
4. The 8th Respondent also filed a preliminary objection dated 12/04/2021 in the above case. In the 1st paragraph of the preliminary objection Respondent contended thus:

“Even though the applicant claimed ownership of certain property adjacent to the quarrying area of this Respondent, no evidence, neither copy of tax receipt no title deed is produced by the applicant to support his claim it. It is also pertinent to note that the applicant has elaborately shown nearly 11 survey numbers of the properties owned by this Respondent, he silent about the Sy. No. of his own property. He has no such property the near vicinity of the quarry of this Respondent.”

5. In paragraph 5 of the counter affidavit, Respondent put a different



story thus:

“This application has been filed with a view to close down my quarry and to take over the same at a throwaway price, so that applicant can Annex petitioner’s property with his adjacent properties and to establish a large mining site.

6. The applicant has stated in the memorandum of application that he is under possession, and enjoyment of 3.25 acres property in Anicadu village, Mallappally taluk of Pathanamthitta District in state of Kerala and that applicant and his family find livelihood from the agricultural yield from the land. It is also stated that 8th Respondent had been operating 2 granite building stone quarries lying on the western and southern side of applicant’s property till March 2016. Countering this averment of the applicant, 8th Respondent denied ownership and possession of property by the applicant in the vicinity of quarry site in his preliminary objection. But in contradictory to his own statement of denial, 8th Respondent is blowing hot and cold by his averment in paragraph 5 of the counter affidavit that the above application has been filed by this applicant with a view to close down Respondent’s quarry and to take over the same at a throwaway price, so that applicant can annex Respondent’s property with applicant’s adjacent property. How can the Respondent approbate and reprobate at a same time? This itself shows the untrustworthiness of the 8th Respondent in his acts and words.

7. In paragraph 5 of the counter affidavit, Respondent has stated that 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 allegation is unfounded and concocted to give an impression to this Tribunal that the above application has been preferred by this applicant due to business rivalry. Applicant has no business or financial interest in any granite quarry and crushing unit anywhere. The 8th Respondent may be put to strict proof with respect to all ad hominem attack made by him against this applicant to wreck his vengeance for questioning his illegal quarrying operation before Court of law.



8. The contention of the Respondent in paragraph 6 that applicant and another who wanted protection money filed W.P.(C) No. 39189/2015 before the Hon'ble High Court of Kerala, is baseless and per se defamatory. Respondent further states that honourable High Court permitted him to conduct quarrying operations in 1 quarry and directed to permit quarrying operations in the 2nd quarry after getting an environmental clearance. Applicant has produced the common judgement of honourable High Court dated 16/03/2016 in W.P. (C) No. 39189/2015 filed by applicant and another and W.P. (C) No. 2783/2016 filed by the 8th Respondent as Annexure-A5 along with the original application.

9. Total area under Annexure-A1 lease dated 18/11/2005 was 1.0183 ha with validity up to 17/11/2017. Total area under Annexure A2 lease dated 22/02/2008 is 5.1962ha with validity up to 21/02/2020. On perusal of Annexure-A5 judgement, it can be seen that honourable High Court took a view that in respect of lease covered under Annexure-A2, the Respondent cannot operate quarry without obtaining Environmental Clearance, considering the submission of applicant as recorded in Annexure A5 judgement thus:

"3. It is submitted by the counsel for the writ petitioner in W.P. (C) No. 39189/15, since the quarrying lease has covered by Exhibit P2 (Annexure A2 herein) is after 2006, in the light of MoEF notification dated 14/06/2006, the petitioner (8 Respondent herein) cannot operate quarry covered by P3 lease. It is to be noted that the petitioner's quarrying lease is more than 5 ha has covered by Exhibit P3. Therefore, this Court is of the view that in respect of the lease covered by Exhibit P3, the petitioner cannot operate quarry without obtaining environmental clearance.

10. The High Court permitted mining quarry covered under Annexure-A1 lease subject to a report from the Tahsildar as to the extent of the available area covered in the lease deed. That condition was imposed by the honourable High Court considering the submission of this applicant that 8th Respondent excavated entire mining area covered by the quarrying leases.

11. Pursuant to Annexure-A5 judgement, 8th Respondent had to stop the



(illegal) quarrying conducted on the strength of Annexure-A1 and A2 lease. The High Court restrained operation of the quarry upon the submission of facts by this applicant, for that vengeance, the 8th Respondent always engaged in ad hominem attack against the applicant without any merit.

12. In para 9 of the counter affidavit, it is stated that applicant has intentionally filed a false affidavit giving false evidence by the way of counter affidavit in a Writ petition W.P. (C) No. 36538/2016 filed by him. The Respondent produced excerpts of the counter affidavit which is alleged to be false by him thus:

"It is not a true to say that Sri. A.J. Abraham is not 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."

13. In order to prove the aforesaid statement given by the applicant in his counter affidavit, Respondent has produced a piece of paper as Annexure R8(c) alleged to be an affidavit sworn by Sri. A.J. Abraham 129/09/2016 as managing Partner of M/s. Shanio crushers. The Annexure R8 (C) does not bear signature of the affiant or the Advocate who attested it, and it also does not bear any seal of the Court or any endorsement authenticating the same.

14. Even considering Annexure R8 (c) document in its face value, it does not show that the aforesaid statement made by the applicant is false. What the applicant stated in his counter affidavit is that Mr. A.J. Abraham is not the owner or proprietor of M/s. Shanio crushers. The affidavit only shows that Mr. Abraham sworn to that he is the partner of M/s. Shanio crushers. He does not claim that he is the owner or proprietor of M/s. Shanio crushers, as he transferred his 3.2026 ha land wherein M/s. Shanio crushers obtained quarrying leases to another before the year 2016. On enquiry, it came to know that now it is under the ownership and possession of K.J. Thomas Kutty, Kannanthanath, Vadasserikara, Ranni and his sons Maneesh Thomas and Jayesh Thomas on behalf of New Shanio Metal Crushing Unit under Tandaper No.6681 of Thottapuzhasseri Village,



Thiruvalla Taluk in Pathanamthitta District. Thus, there is nothing false in the statement of applicant in the counter affidavit produced as Annexure R8(c). The concocted allegation of perjury against the applicant by the Respondent would not hold water and I am ready to face it if respondent could prove any perjury against me.

15. The averment of the Respondent in para 12 of the counter affidavit that this applicant has filed two writ appeals before the Kerala High Court in the same subject matter and seeking same relief of the above case and suppressing the pendency of the same, above case has been filed by me, is absolutely baseless. The writ appeals W.A. No. 583/2017 and 699/2017 has been filed by me challenging Annexure-A6 common judgement of Honourable High Court in W.P.(C) No. 32820/2016 and 34335/2016. The subject matter of the writ petition and writ appeals is regarding the operation of metal crusher unit operated by the 8th Respondent, namely M/s. Phillips Grano Products causing serious threat to applicant's property and the reliefs sought in the writ petition was thus:

1. Issue a Writ of certiorari calling for the records relating to Exhibit P8 (consent to operate dated 02/01/2016 issued to the metal crusher unit of 8th Respondent) and Exhibit P15 (D&O license issued by the panchayat) and quash the same.

2. Issue a Writ of mandamus directing the Respondents 1 to 4 (District Collector, District Geologist, Environmental Engineer and Panchayat Secretary) to take immediate and effective steps to prohibit the illegal operation of the metal crusher unit by the Respondent the property comprised in Sy. No. 325/1, 325/1-2 and 327/1 of Anicadu village in Mullappally taluk in Pathanamthitta District.

The Writ appeals were filed for setting aside Annexure A6 judgement and which has no connection with the subject matter of the above or general application filed by the applicant.

16. The subject matter of the above original application is restoration of environment damaged by the illegal operation of quarry is covered under Annexure-A1 and A2 lease by the 8th Respondent. According to the Respondent himself, the quarries covered under Annexure-A1 and A2



lease were stopped since 16/03/2006 and 31/03/2015 respectively. The Writ petition W.P.(C) No. 32820/2016 was filed by the applicant in October 2016.

17. The allegation levelled against this applicant by the respondent in para 13 of the counter that applicant is minting money by running benami quarry and crusher is utterly false and baseless.

18. The contention of the Respondent that the above application is beyond the scope of jurisdiction of this Honorable Tribunal since the subject matter and reliefs claimed for are squarely covered by Mines Act, 1957 and Minor Mineral Concession Rules, 2015 which are not included in schedule 1 of the National Green Tribunal Act, is incorrect. The contention in paragraph 15 that there is no violation of any specific statutory environmental obligation that give rise to any substantial cost of law so as to invoke the jurisdiction of NGT, is also wrong.

19. The main reliefs sought in the above application are for restoration of environment by reclaiming the large mining pits formed out of illegal mining carried over by the 8th Respondent in the property covered under Annexure-A1 and A2 lease and also to recover environmental compensation and for direction to initiate penal action under Section 19 of the environment Protection Act against the 8th Respondent for mining in the area of 5.1962 ha covered under Annexure-A2 lease without obtaining prior environmental clearance as mandated under EIA notification, 2006.

20. EIA notification 2006 is issued under Section 3 of Environment Protection Act 1986 read with Rule 5 of environment Protection Rules 1986 in supersession of the earlier notification dated 27/01/1994. EIA notification has been issued on 14 September 2006. As per para 2 and Item No.1 of the Schedule of EIA Notification non coal mining in lease area exceeding 5 hectares required prior environmental clearance. Admittedly respondent operated the quarry until 16.03.2016 without obtaining Environmental clearance from the concerned agency. Therefore, the operation of the quarry was in violation of EIA Notification, 2006 issued under the provisions of EP Act and Rules. Since EP Act is a statute enlisted in the schedule of NGT Act, 2010 conferring jurisdiction to Tribunal,



respondent's plea against maintainability is to be rejected.

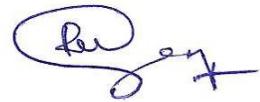
21. It is respectfully submitted that this Tribunal by order dated 16.06.2021 directed all the parties in the above case to file their objections if any on the report of the joint committee on or before 16.07.2021. Thereafter, the respondents were directed to complete their pleadings and also to file any objections to the committee report on or before 17.09.2021. This applicant has filed my response to the report of the joint committee on 16.09.2021. The Joint Committee after the laborious site inspection found that 8th respondent has conducted illegal quarrying causing serious environmental damage and the preliminary environmental damage of about 160 crores was estimated by the committee in their report dated 15.06.2021. The 8th respondent has not filed any objection to the report so far, despite of the repeated direction of the tribunal, which tends to show that they have no objection to place against the report.

In the above circumstances, it is most humbly prayed that this Honourable Tribunal may be pleased to allow the above original application and directions against the respondent to realise the environmental compensation from the 8th respondent as per the report of the Joint Committee, in the interest of justice and environment.

All the facts stated above are true and correct.

Dated this the 27th day of January 2022

Deponent:



Solemnly affirmed and signed by the deponent who is personally known to me on this the 27th day of January 2022 at my office at Ernakulam.

K.K. Ashkar



Advocate