

Presented on: 24.11.2023

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI**

**O.A No. 73 OF 2023 (SZ)
[Earlier OA 294 OF 2022 (PB)]
IN THE MATTER OF**

**BALAN C. K & Others : Applicants
Vs.
State of Kerala & Others : Respondents**

**REPLY STATEMENT FILED BY THE 6TH RESPONDENT UNDER RULE 16
OF THE NATIONAL GREEN TRIBUNAL (PRACTICES AND PROCEDURES)
RULES, 2011**

Roshen & Roshen
ADVOCATES

ROSHEN D. ALEXANDER (R 915) K/245/2004
TINA ALEX THOMAS (T 315) K/532/04
HARIMOHAN K/327/2018
KOCHURANI JAMES K/3502/2022

COUNSEL FOR THE 6TH RESPONDENT

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI**

**ORIGINAL APPLICATION No. 73 OF 2023 (SZ)
[Earlier OA 294 OF 2022 (PB)]**

IN THE MATTER OF

BALAN C. K & Others

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State of Kerala & Others

: Respondents

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Dated this the 24th day of November, 2023.



ADV. ROSHEN D. ALEXANDER
Counsel for the 6th Respondent

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI**

**ORIGINAL APPLICATION No. 73 OF 2023 (SZ)
[Earlier OA 294 OF 2022 (PB)]**

IN THE MATTER OF

BALAN C. K & Others

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State of Kerala & Others

: Respondents

**REPLY STATEMENT FILED BY THE 6TH RESPONDENT UNDER RULE
16 OF THE NATIONAL GREEN TRIBUNAL (PRACTICES AND
PROCEDURES) RULES, 2011**

I, E. Indira, aged 68 years, W/o. Late Madhavan Nair, Managing Partner, Geo Enterprises, Iyyad P.O., Kozhikode district, Kerala – 673 574 and residing at Eradiyil House, Mangad P.O., Unnikulam, Kozhikode district, Kerala – 673 574, do hereby solemnly affirm and state as follows:

1. I am the Managing Partner of M/s. Geo Enterprises, a registered partnership firm who is arrayed as the 6th Respondent in the above Original Application. I am aware of the facts of the case and I am competent to swear to this Reply Affidavit.
2. The above Original Application has been instituted as a Letter Petition submitted by the Applicants before the Principal Bench of the Hon'ble National Green Tribunal, New Delhi which was numbered as OA No. 294/2022 (PB). The OA was later transferred to this Hon'ble Tribunal. After raising so many allegations against the conduct of the quarry Applicants prayed for an order to conduct environmental survey of the area and assess the impact of quarrying to the natural habitants (sic). At the outset itself it is humbly submitted that all the averments and allegations stated in the Letter Petition are absolutely false, concocted and therefore hereby denied except to the extent to which they are specifically admitted hereunder.



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Indira
Managing Partner

3. It is submitted that on behalf of the Joint Committee, the 5th Respondent – District Collector herein has filed two status reports dtd. 13.12.2022 and 28.01.2023 whereas the 3rd Respondent also filed another report dtd. 05.08.2023. In all the three reports the respective parties sought further time to conduct detail survey and depth measurements to assess the alleged environmental damage. Therefore, the present reply is filed by this Respondent without prejudice to our rights to file a detailed counter affidavit after submission of the final reports by the Joint Committee as well as the Kerala State Pollution Control Board.
4. It is submitted that the above Letter Petition is not maintainable either in law or on the facts and circumstances of the case. The above Letter Petition was submitted only on an experimental basis and with the oblique motive to wreak vengeance on the 6th Respondent. The Letter Petition is absolutely tainted with malafides and the Applicants are liable to be proceeded for suppression of material facts. As held by the Hon'ble Supreme Court in *K. D. Sharma v. SAIL, 2008 (12) SCC 481*, a person invoking the extraordinary jurisdiction of the Court should come with clean hands by stating all material facts. He cannot pick and choose statement of facts to suit his convenience. The moment it is revealed that the Applicants have not divulged all material facts and had suppressed material facts, the main petition have to be dismissed at the threshold itself without going into the merits. Therefore, it is humbly submitted that the OA is liable to be dismissed in limine for suppression of material facts.
5. **Quarrying Lease with all valid ancillary licenses:** The 6th Respondent is a partnership firm which was constituted on 20.03.1987 and further reconstituted in the year 1995 as well as in 2004 and I am functioning as the Managing Partner. It is submitted that originally, the 6th Respondent was awarded with a Quarrying



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[Signature]
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Lease in the year 1988 which was valid for 12 years. The area was further extended by virtue of another lease, which was executed in the year 1995 and finally, Government have executed a Quarrying Lease dtd. 19.04.2010 by which permission was granted to the 6th Respondent for quarrying 2.6305 hectares in Re-survey No. 29 of Sivapuram Village of Koyilandy Taluk of Kozhikode District, Kerala State. For the purpose of reference, a true copy of the Quarrying Lease dtd. 19.04.2010 is produced and marked as **Annexure R6(I)**. It is submitted that the lease was issued after satisfying the conditions for a valid lease. Ann: R6(I) lease was valid up to 18.04.2022. However, we have operated the quarry only till the month of November, 2021 and has not availed the benefit of Covid-19 extension granted by virtue of G.O (Rt) No. 203/2021/ID dtd. 12.02.2021 by the Government of Kerala.

6. It is submitted that as per Kerala Minor Mineral Concession Rules, Ann: R6(I) lease was issued since the 6th Respondent obtained all other ancillary licenses and permissions required under law. The 6th Respondent had Consent from Pollution Control Board from its inception which was further varied and renewed in due course. For the purpose of issuance of Ann:R6(I) which is the latest lease, this Respondent has obtained consent to operate bearing No. PCB/KKD/DO/CO/501/08 dtd.17.07.2008 from the Kerala State Pollution Control Board (hereinafter referred to as KSPCB for brevity). A true copy of the consent to operate bearing No. PCB/KKD/DO/CO/501/08 dtd. 17.07.2008 issued by KSPCB is produced and marked as **Annexure R6(II)**. Ann:R6(II) was valid till 30.06.2011. The consent to operate was further renewed and extended up to 01.02.2012 by consent bearing No. PCB/KKD/DO/ICO/R1-501/2008 dtd. 08.08.2011. A true copy of the consent to operate bearing No. PCB/KKD/DO/ICO/R1-501/2008 dtd. 08.08.2011 issued by KSPCB is produced and marked as



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Joshi
Managing Partner

Annexure R6(III). Further, the integrated consent to operate was renewed and extended up to 01.02.2015 by virtue of consent No. PCB/KKD/DO/ICO-R2/501/2012 dtd. 04.05.2012. A true copy of the consent to operate bearing No. PCB/KKD/DO/ICO-R2/501/2012 dtd. 04.05.2012 issued by KSPCB is produced and marked as **Annexure R6(IV)**. Later, the consent order was varied and renewed up to 09.02.2016 by consent variation order bearing No. PCB/KKD/DO/501/2008 dtd. 08.05.2015. A true copy of the consent variation order bearing No. PCB/KKD/DO/501/2008 dtd. 08.05.2015 issued by KSPCB is produced and marked as **Annexure R6(V)**. Further, the consent order was varied and renewed up to 01.02.2018 by consent variation order bearing No. PCB/KKD/DO/501/2008 dtd. 09.11.2015. A true copy of the consent variation order bearing No. PCB/KKD/DO/501/2008 dtd. 09.11.2015 issued by KSPCB is produced and marked as **Annexure R6(VI)**. Later, the integrated consent to operate was renewed up to 18.04.2022 by consent No. PCB/KKD/DO/ICO-14/501/2018 dtd. 17.02.2018. A true copy of the renewed integrated consent to operate bearing No. PCB/KKD/DO/ICO-14/501/2008 dtd. 17.02.2018 issued by KSPCB is produced and marked as **Annexure R6(VII)**. It is submitted that, thus this Respondent had valid consent to operate issued by the KSPCB till the validity of mining lease which was up to 18.04.2022.

7. In addition to the consent to operate, this Respondent had all other ancillary licenses and permissions mandatory for obtaining a quarrying lease in accordance with the Kerala Minor Mineral Concession Rules, namely D&O (Trade) license from the local Panchayat, Explosive license issued by Joint Chief Control of Explosives etc. This Respondent also appointed a Mines Manager under the Metalliferous Mines Regulations, 1961, which was authorized by the Ministry of Labour and Employment, through Directorate General of Mines' Safety under the proviso to Regulation



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34(c) of Metalliferous Mines Regulations, 1961. Along with the appointment of Mine's Manager, the 6th Respondent had also taken permission to use Heavy Earth Moving Machinery (HEMM) dtd. 28.06.2017. In fact, since Ann: R6(I) is a Mining Lease which was issued before 2012, the 6th Respondent did not require environment clearance till renewal, as contemplated by the Hon'ble Supreme Court in *Deepak Kumar's case*, and also the law declared by the Hon'ble High Court of Kerala in *Kerala River Protection Council, 2015 (2) KLT 78*, since the area is less than 5 Hectares and the Quarrying Lease was granted before 18.05.2012. For the purpose of reference, a true copy of the judgment 23.03.2015 in W.P.(C) No.31148 of 2014 & connected cases reported as *Kerala River Protection Council, 2015 (2) KLT 78* is produced and marked as **Annexure R6(VIII)**. Though, SLP was filed before the Hon'ble Supreme Court as SLP(c) Diary No. 38313/2019 against Ann: R6(VIII) judgment, the same was dismissed as withdrawn by order dtd. 16.12.2022. A true copy of the order dtd. 16.12.2022 in SLP(c) Diary No. 38313/2019 on the files of the Hon'ble Supreme Court is produced and marked as **Annexure R6(IX)**.

8. **Applicants' continuous attempt to prevent operation of 6th Respondent's quarry:** It is submitted that the Applicants herein are in the habit of making false and unnecessary complaints against 6th Respondent's quarry right from its inception. Though the 6th Respondent had functioned the quarry with all permits and licenses, either the Applicants or through their relatives they have moved complaints one after the other in order to close down the quarry permanently. One of the allegations raised by the Applicants in the present Letter Petition is with respect to proximity of Applicants' houses with the quarry and the alleged instances where stones were pelted to their houses. On the same set of allegations, the 3rd Applicant herein namely Mr. Haneefa made a complaint to the Revenue Authorities during 2016. The Tahsildar, Thamarassery



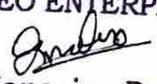
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conducted an enquiry and an inspection was conducted on 15.11.2016. It was specifically reported by the Tahsildar that the house of the complainant therein, namely Haneefa **is situated about 100 meters away from the Quarry, and the 6th Respondent is functioning the Quarry with all Licenses for the past 30 years.**

After hearing the parties on 05.12.2016, the Tahsildar issued an order directing the 6th Respondent to conduct quarrying, in accordance with the conditions of License and in accordance with law. For the purpose of reference, photocopy of proceedings of the Tahsildar dtd. 08.12.2016 along with its English translation is produced and marked as **Annexure R6(X)**. Though the Applicants, are aware of Ann: R6(X) they had wilfully suppressed the same only to mislead this Hon'ble Tribunal. It is also worthwhile to mention that the same Applicant, i.e., Mr. Haneefa, had filed another complaint before the Sub Divisional Magistrate, Kozhikode, in which the Sub Divisional Magistrate in the inception passed a conditional order under Section 133(1)(d) of the Code of Criminal Procedure, in which finally it was stated that the 6th Respondent herein has proved the functioning of the Quarry as per valid licenses issued by the Authorities. In the said circumstances, the complaint was disposed off directing the Senior Geologist, Mining and Geology, Kozhikode and Environmental Engineer, Pollution Control Board to conduct frequent inspection to verify, whether there is any violation of license. Further, the Secretary, Unnikulam Grama Panchayat was also directed to file violation of D&O License, if any. For the purpose of reference, true copy of the order dtd. 22.05.2017 issued by the Sub Divisional Magistrate, Kozhikode in A.10889/2016 is produced and marked as **Annexure R6(XI)**. Though the Applicants are aware about Ann: R6(XI), they suppressed the said material fact only to take this Hon'ble Tribunal for a ride. Anns: R6(X) and R6(XI) became final and the Applicants have not challenged the same in any proceedings.



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9. **Site of the Quarry and its operation:** It is submitted that the statements made by the Applicants to the effect that their houses are situated within the prohibited distance from the Quarry, is absolutely false and hence denied. Apparently, all the Applicants are residing outside 100 meters from the site where quarrying operations were conducted on the basis of Ann: R6(I) lease. No accidents have occurred to any of the neighbours since the inception of the quarry.
10. **Malafides of the Applicants:** The Applicants have an axe to grind against 6th Respondent. The 2nd Complainant in the Letter Petition namely Shyju K.E. is a construction contractor, against whom C.C. No. 833 of 2013 was initiated by the local police and charge sheet was filed before JFCM-II, Perambra, under Sections 294(B), 324, 447 and 506 of IPC for involving in unlawful and illegal activities against the 6th Respondent. However, later he was acquitted under Section 248(1) of Cr.P.C. His uncle, one Mr. Sahadevan, had earlier filed W.P.(c) No. 595 of 2009, which was later disposed off by the Hon'ble High Court of Kerala after finding that the complaints were initiated only as an eye soar of the Petitioners therein to see that the 6th Respondent herein to stop the quarry. A true copy of the judgment dtd. 28.01.2009 in W.P.(c) No. 595 of 2009 on the files of the Hon'ble High Court of Kerala is produced and marked as **Annexure R6(XII)**. The said Complainant Mr. Shyju K. E. is now stepped into the shoes of his uncle to persecute the 6th Respondent.
11. As far as the 3rd Complainant in the Letter Petition is concerned, 3rd Complainant's brother Mr. Mohammed Rafi had been proceeded under Section 107 of Code of Criminal Procedure for indulging in illegal activities against the 6th Respondent herein and their quarry and lodged Crime No. 293/2017 of Balussery Police Station. Though the said Mohammed Rafi had filed O.P. No. 4355 of 2001 before the Hon'ble High Court of Kerala with the intention to shut down the

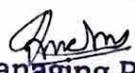


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Quarry, after hearing both sides, the Hon'ble High Court of Kerala by its judgment dtd. 27.08.2009 has directed the District Collector, Kozhikode, to verify whether the 6th Respondent is conducting the Quarry with all licenses. It was further verified and realized that the contentions taken by the said Mr. Mohammed Rafi are not correct. For the purpose of reference, true copy of the judgment dtd. 27.08.2002 in O.P. No. 4335 of 2001 rendered by the Hon'ble High Court of Kerala is produced and marked as **Annexure R6(XIII)**. The 1st Complainant, Mr. Balan C. K, also has an axe to grind against this Respondent and he along with some others moved the Sub Divisional Magistrate, Kozhikode, against quarrying operation of this Respondent, which was finally dismissed on 09.03.2012. For the purpose of reference, true copy of order dtd. 09.03.2012 issued by the Sub Divisional Magistrate, Kozhikode is produced and marked as **Annexure R6(XIV)**.

12. Be that as it may, while the quarry was functioning; during 2017, the Applicants herein have filed W.P.(C) No. 21713/2017 before the Hon'ble High Court of Kerala seeking prayers inter alia to declare that the 6th Respondent herein is not entitled to conduct mining activities on the basis of the mining lease. The Applicants also sought for further reliefs for cancelling the mining lease. Though the Hon'ble High Court of Kerala has issued an interim order during inception, after filing of the Counter Affidavit and after hearing all parties the Hon'ble Court dismissed the Writ Petition finding that the 6th Respondent herein has all valid statutory licenses to conduct quarrying operations. For the purpose of reference, a true copy of the judgment dtd. 18.12.2017 in W.P.(c) No. 21713/2017 on the files of the Hon'ble High Court of Kerala is produced and marked as **Annexure R6(XV)**. During the proceedings, at the instance of the Writ Petitioners, the Hon'ble High Court of Kerala appointed an Advocate Commissioner to find out the truth with respect to the allegations



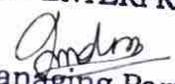
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stated in the Writ Petition. The Advocate Commissioner has filed a detailed report negating the contentions taken in the Writ Petition. A true copy of the Commission Report filed by the Advocate Commissioner in W.P.(c) No.21713/2017 on the files of the Hon'ble High Court of Kerala is produced and marked as **Annexure R6(XVI)**. The Hon'ble High Court had issued judgment dtd. 18.12.2017 after ascertaining the facts reported by the Advocate Commissioner. Complainants in Letter Petition namely Balan C. K. and Shyju K. E. were Writ Petitioners 3 and 1 in W.P.(c) No. 21713/2017 along with the brother of the 3rd Complainant Mr. Haneefa M who was the 2nd Petitioner therein. Applicants submitted the Letter Petition without divulging all these facts or by suppressing the aforementioned material facts. Nothing prevented them from divulging the aforementioned facts. Since the Applicants intentionally concealed the aforementioned material facts, they are liable for suppression of material facts and the OA is liable to be dismissed on that ground alone.

13. **Response to the reports submitted by Joint Committee constituted as per order dtd. 04.05.2022 by the Hon'ble National Green Tribunal (PB) in O. A. No. 294/2022**

The Letter Petition sent by the Applicants was numbered as O.A No. 294/2022 (PB) and taken up for consideration on 04.05.2022. On the basis of the allegations raised the Hon'ble Principal Bench of NGT ordered that factual position needs to be verified and in case of violation of environmental norms, remedial action is required to be taken. For the said purpose a joint committee was constituted consisting of SEIAA, State Pollution Control Board and District Collector, Kozhikode and the committee was directed to verify the factual position, look in to the grievances of the Applicants and take remedial action in accordance with law by following due process within one month. District Collector, Kozhikode was designated as the nodal agency for co-ordination and compliance and the matter was



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posted for factual and action taken report to 26.07.2022. A true copy of the order dtd. 04.05.2022 in O.A No. 294/2022 on the files of the Hon'ble National Green Tribunal, Principal Bench is produced and marked as **Annexure R6(XVII)**. On 26.07.2022, the O.A was adjourned to 07.09.2022. On 07.09.2022 the O.A got adjourned to 11.10.2022. From 11.10.2022, the case stands adjourned to 22.11.2022. On 22.11.2022, since no report was filed by the joint committee, the Principal Bench adjourned the matter to 30.01.2023 directing the joint committee to submit its report within one month with a rider that if the report is not submitted within the permitted period, exemplary costs would be imposed on the members of the joint committee. A true copy of the order dtd. 22.11.2022 issued by the Hon'ble National Tribunal, Principal Bench in O. A. No. 294/2022 is produced and marked as **Annexure R6(XVIII)**. It is learnt that pursuant to its constitution, the Joint Committee had filed two reports; an interim report dtd. 13.12.2022 and another status report dtd. 28.01.2023.

14. **Interim report of the Joint Committee dtd. 13.12.2022 and its response:** Pursuant to the order dtd. 04.05.2022 of the National Green Tribunal, Principal Bench, the Joint Committee was constituted. While the District Collector, Kozhikode acted as the nodal agency, the Environmental Engineer District Office of the Kerala State Pollution Control Board was nominated as the representative of KSPCB and Tahsildar, Thamarassery Taluk was nominated to represent the District Magistrate. Dr. C. C. Harilal, Member SEAC was nominated as the representative of SEIAA. It is reported that the Joint Committee conducted an inspection on 02.06.2022 and submitted an interim report dtd. 13.12.2022 to the National Green Tribunal. As per the report the recommendations are as follows:

The quarry is presently in closed condition. The validity of the Certificate issued to the firm seized on 18.04.2022. Considering the non-compliance in several criteria concerning



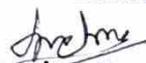
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quarrying operation, the permit of the quarry may not be extended further. The firm may be made responsible for over and deeper extractions. For this reason, necessary legal measures may be taken on this account, after a detailed technical evaluation on the extent of over extraction. Letter has been sent to the office of the Mining and Geology from this office on 08.12.2022 indicating that the immediate follow up action should be taken against Geo Enterprises based on the report of PCB and SEAC members.

It is submitted that the interim report submitted by the Joint Committee is neither conclusive nor final. It is pertinent to point out that the Hon'ble National Green Tribunal, Principal Bench has ordered inspection by Joint Committee to verify factual position, look into the grievance of the Applicants and take remedial action in accordance with law by following due process. It is submitted that despite the above order no notice was served on this Respondent either by the Joint Committee or by its members or connected instrumentalities of the State. It is submitted that the result of such report is one sided, unilateral and without taking into record this Respondent's version. It is submitted that though certain observations were made in the interim report dtd. 13.12.2022, all such observations are only on the basis of surmises and conjunctures. This is because no specific reason was given and no specific conclusions were arrived in the report. Therefore, this Respondent may be given liberty to place on record its response as and when the Joint Committee may place on record its final report, if any.

15. **Status Report of the Joint Committee dtd. 28.01.2023 and its response:** As per Ann: R₃II report produced along with the status report on behalf of the 3rd Respondent, on 28.12.2022, a meeting was convened by the nodal officer for further action pursuant to the directions. In the meeting held on 28.12.2022, the nodal officer enquired about steps that have been taken to assess the damages caused by over extraction. The member of Kerala State Pollution Control Board informed that the environmental compensation can be determined only after receiving the report from Department of Agriculture, Department of Soil Conservation and Department of



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Ground Water regarding the amount of damage caused due to the operation of the quarry. The District Collector recommended for a site inspection to see if production has declined significantly and calculating loss as much as possible. The Ground Water Department was directed to test the water quality in the area for which their representative assured. The Soil Conservation Department was ordered to conduct an inspection regarding the soil's quality. It was further directed that a joint inspection comprising Department of Agriculture, Department of Ground Water and Department of Soil Conservation shall be carried out within two weeks under the leadership of the Soil Conservation Officer and the report have to be submitted before the Pollution Control Board. Further, Geology and Survey Department was directed to complete their site inspection and report the alleged damage caused by the quarry within a week. The Assistant Engineer, Unnikulam Grama Panchayat was directed to conduct an enquiry on the damage caused to nearby houses due to illegal operations of the quarry.

16. Thus, as discernible from the status report dtd. 28.01.2023 (Ann: R3II), all the members of the joint inspection committee have proceeded on the wrong assumption that there are illegalities committed by the project proponent. There is no basis for such assumption without considering the version of this Respondent. The only material available before the Committee was the complaint of the Applicants which contains distorted facts. Without conducting any inspection and without getting any factual or status report, all members of the joint inspection committee has presumed that there is over excavation and environmental damage. It is submitted that though Government; Director of Mining and Geology; District Collector, Kozhikode; Geologist, District Office, Kozhikode; Environmental Engineer, KSPCB and Secretary of the local Panchayat are Respondents in W.P.(c) No. 21713/2017, none of the above



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Jndm
Managing Partner

officers who are members of the Committee has not informed either the Principal Bench or this Hon'ble Tribunal that most of the complaints raised by the Applicants were already dealt with by the Hon'ble High Court of Kerala in W.P.(c) No. 21713/2017 and pronounced **Ann:R6(XV)** judgment. In as much as many other questions presently reiterated by the Applicants are already considered by the Hon'ble High Court of Kerala and rejected the contentions of the Applicants, all other Authorities are estopped from reagitating the same again at the behest of the very same parties. It is also worthwhile to mention that since the present dispute is also covered under Ann: R6(XV); the present claim is barred by *resjudicata* in as much as Ann: R6(XV) became final and never challenged either before the Division Bench of the Hon'ble High Court of Kerala or before the Hon'ble Supreme Court.

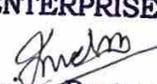
17. Pursuant to the meeting held on 28.12.2022 the Geologist, Kozhikode submitted a letter dtd. 18.01.2023 to the District Collector, Kozhikode stating that pursuant to the decisions dtd. 28.12.2022 a joint inspection was conducted on 05.01.2023. However, it was reported [Ann: II(a) along with the status report dtd. 28.01.2023] that since there was no surveyor to quantify the extraction, services of the Taluk Surveyor, Thamarassery was sought for. It was further observed that at the time of joint verification, the middle section of the quarried area was filled with water which made the ascertainment of actual amount of excavated quantity impossible. Therefore, it was reported that the Geologist is not in a position to quantify the extracted amount. Though the Taluk Surveyor has prepared a sketch, it was informed by the Taluk Surveyor that it is not possible to take the measurements of the depth of the water filled part.
18. Further, another joint inspection was conducted on 09.01.2023 by a team consisting of District Soil Conservation Officer, Kozhikode, Assistant Director of Soil Survey, Kozhikode, Assistant Director of



For, GEO ENTERPRISES
Jnelor
 Managing Partner

Agriculture – Balussery and Hydro Geologist – Ground Water Department. It was specifically reported [Ann:II(b) along with the status report dtd. 28.01.2023] by the joint team that the quarry is not functioning for the last one year. **It was further reported that prima facie no issues are seen with the quality of soil, health and productivity of crops.** Though the Applicants and their relatives raised several complaints, it was reported by the joint team that since the quarry is not functioning for the last one year, **they are unable to directly feel or understand the issues raised by the Applicants.** It is also stated therein that the results of the water samples were collected will be submitted. Further, the Secretary, Unnikulam Grama Panchayat had reported [Ann:II(c) along with the status report dtd. 28.01.2023] to the District Collector, Kozhikode that the Assistant Engineer, LSGD had conducted an enquiry to estimate the damage caused by the quarry to the nearby houses as per the direction of the National Green Tribunal and assessed the compensation amount. The Secretary has reported that the total amount of compensation assessed by the Assistant Engineer is Rs.52,300/-. Primarily, it is submitted that there was no such direction from the Hon'ble Tribunal to the Secretary, Unnikulam Grama Panchayat to assess the damage caused to nearby houses. Secondly, there is no evidence to prove that the plastering cracks reported in the letter dtd. 12.01.2023 of the Secretary, Unnikulam Grama Panchayat had occurred due to the functioning of the quarry. Thirdly, the said letter did not say the basis of assessing the compensation amount. Therefore, it is submitted that the compensation calculated as per the report of the Secretary is without jurisdiction and only on the basis of surmises and conjunctures. Apart from this the Environmental Engineer, KSPCB had submitted a report [Ann:III] dtd. 25.01.2023. It is submitted that none of the above reports were prepared after observing due process. The reports are all once sided and unilateral.



For, GEO ENTERPRISES

 Managing Partner

19. On the basis of the aforementioned reports of different departments the findings of the joint committee and response of this Respondent are as follows:

- (i) No visible damages in the cultivation of the area, health of crops, productivity, reduction in yield or any deterioration in the soil properties of the area due to quarrying activities. (no response is needed)
- (ii) Though the local residents complained about falling of fly rocks, dust emanation, cracks formed on walls, dropping of water level, sound pollution etc. the same could not be verified as a quarry has stopped working since one year. However, it was observed/remarked that on the basis of the complaints of the local residents, it is necessary to quantify the damages reported in crops/cultivation, reduction in crop yield, supply of water to households of the area to meet water scarcity, if any, the associated costs all are to be counted and quantified to convert the damages into environmental compensation. It is submitted that the said observation was not based on any independent examination but only on the basis of complaints raised by Applicants that too about the quarrying stopped a year ago. It is submitted that the said observation is only playing for gallery and nothing else. By making such indiscrete scathing remarks, the joint committee has violated the fundamental principles of natural justice since this Respondent was never heard with respect to the complaints raised by the Applicants.
- (iii) It was further reported that to analyse deterioration in water quality, Ground Water Department had



For, GEO ENTERPRISES
[Signature]
Managing Partner

collected well water samples from houses adjacent to quarry site as well as from a nearby pond and the results are not yet received. The response of this Respondent regarding water quality is reserved for the time being anticipating the final report.

- (iv) Regarding the damage caused to nearby houses, the joint committee relied on Ann: II(c) report drawn by the Secretary, Unnikulam Grama Panchayat which was prepared on the inspection conducted by the Assistant Engineer. As submitted above, the assessment of compensation made by the Assistant Engineer has no basis since the same was prepared without any rhyme and reason. Neither the report of the Secretary, Panchayat nor the report of the joint committee explains the basis for the calculation of compensation. It is further submitted that the cracks alleged to be seen in the inspected houses were not occurred due to the operation of this Respondent's quarry.
- (v) It was further reported that major assessment remaining is regarding the alleged damages to environment due to over extraction which needs help from experts to conduct a detailed study. It was further reported that the joint committee has decided to request the State Geology Department to provide expert personnel from its office to help the District Geology Department in depth measurement and quantification of mined minerals to prepare a dependable survey sketch on the report. It is submitted that the alleged damages to environment due to the alleged over extraction has no basis. The said observation was not on the basis of any



For, GEO ENTERPRISES
[Signature]
Managing Partner

material. The Joint Committee and its members are presuming over extraction without any material on record. This Respondent has not done any damage to environment. This Respondent is not liable for over extraction. It is submitted that, this Respondent conducted quarrying operations strictly in accordance with the mining plan and the quantity permitted. Allegations to the contrary are absolutely false and hence hereby denied to its entirety.

20. It is submitted with great respect that this Respondent has conducted quarrying in accordance with a valid lease and in accordance with law. The applicants are trying to prevent the quarrying operations right from its inception. The averments in the letter petition are absolutely false and denied to its entirety. This Respondent had conducted quarrying strictly in accordance with the permissions granted, the mining plan and conditions of the lease and paid royalty to the Government.

Hence it is humbly prayed that this Hon'ble Tribunal may be please to accept the present reply and dismiss the above Original Application with costs to this Respondent.

VERIFICATION

I, E. Indira, aged 68 years, W/o. Late Madhavan Nair, Managing Partner, Geo Enterprises, Iyyad P.O., Kozhikode district, Kerala – 673 574 and residing at Eradiyil House, Mangad P.O., Unnikulam, Kozhikode district, Kerala – 673 574, do hereby solemnly verify that the contents of paragraphs 1 to 20 of the above reply statement are true and correct to the best of my knowledge, information and belief and no part of it is false and nothing material has been concealed therein.

Dated this the 24th day of November, 2023



6th Respondent: E. Indira

Geo Enterprises

For, GEO ENTERPRISES
Indira
Managing Partner

Adv. Roshen D. Alexander
 Counsel for the 6th Respondent



കേരളം കേരल KERALA

E 771690



Smt. E. Indira,

FORM - 'H'
(See Rule 32)

Quarrying Lease

This indenture made this the 19th day of APRIL 2010 between the Governor of Kerala (hereinafter referred to as the "State Government" which expression shall, where the context so admits be deemed to include his successors and assigns) of the one part and Smt. E. Indira, aged 54 years, W/o. Late. Madhavan Nair, Managing Partner, M/s. Geo Enterprises, Iyyad P.O. Unnikulam, Kozhikode, resident of Earadiyil House, Mangad P.O. Unnikulam, Kozhikod Dt, in the Village of Sivapuram, Taluk of the Koyilandy in Kozhikode District (hereinafter called the "Lessee" which expression shall where the context so admits, include her executors, administrators, representatives and permitted assigns) of the other part.

Megharan
19/04/2010
Geologist

Smt. E. Indira
Smt. E. Indira

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600 100/-
B-6-2010
S. Indira
Sivapuram
Koyilandy



- 11 -

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2010/10/20

Witnesseth that in consideration of the rents and royalties and lessee covenants, hereinafter reserved and contained the State Government doth hereby demise unto the lessee the land measuring 2.6305 hectares described in the schedule hereunder and delineated on the plan here to annexed and therein coloured red (hereinafter called the "said lands") to hold the same for a period of 12 (Twelve) years commencing from the 19th April 2010 day and ending on the 18th April 2022 day for the purposes of extracting minor minerals and subject to the terms and conditions contained in the Kerala Minor-Mineral Concession rules, 1967 (hereinafter referred to as "the Rules") and to the terms and conditions hereinafter appearing.

1. The Lessee shall have the right in and upon the said lands to extract Granite Building Stone (hereinafter called the said mineral) and to do all acts necessary for the extraction of the said mineral including the erection on the said lands, building and plant required for the purposes and also to take lead and carry away over the said lands and to dispose off the said minerals extracted as aforesaid.

2. The Lessee shall during the subsistence of this lease have the liberty to work the said mineral and remove the same from the quarry hold on permits issued by the competent authority or any other officer authorized by him in this regard. The permits shall be issued only on the basis of pre-paid royalty at the rates specified in schedule 1 to these Rules. The royalty rates shall be subject to revision from time to time as the State Government may order.

3. The Lessee shall pay to the State Government an yearly surface rent equal to the land revenue if any, assessable under the rules for the time being in force, or if the land be the property of Government or in reserve forest then equal to the land revenue plus cess, if any per hectare of the land the surface whereof shall be occupied or used by the lessee for any of the purposes of this demise and so in proportion for any area less than a hectare. The said surface rent shall be paid by yearly payments, the first of such payments to be made on or before the last day of the first year of occupation provided always that no such rent shall be paid or demanded in respect of any roads or ways now in existence.

Megharan
 19/04/2010
 Geologist

Smt. E. Indira
 Smt. E. Indira
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- 12 - -3-

Vol. 1200

- 4. The Lessee shall at all time during the currency of this demise keep correct and intelligible books of account showing accurately the quantity of the said minerals extracted and the weight and value of the said mineral sold or exported together with the names of the purchasers or consignees. The lessee shall also, maintain a register of employees showing therein separately men, women and children employed daily and shall at all reasonable times allow the competent authority appointed under the rules (hereinafter referred to as "competent authority") or the officer authorized by him to examine the said books of account and the register of employees and to take copies and extracts there from. The Lessee shall submit reports in Forms 'F' and 'G' on the specified dates.

- 5. All sums found due under or by virtue of this deed from the Lessee may be recovered from him jointly and severally from them and his properties movable and immovable under the provisions of the Revenue Recovery Act for the time being in force as though such sums are arrears of land revenue or in any other manner as the State Government may deem fit.

- 6. The Lessee shall at the lessee's own expense erect and at all time maintain and keep in repair boundary marks and pillars along the boundaries of the said lands according to the demarcation shown in the plan hereto annexed.

- 7. No quarrying operations or working shall be carried on or permitted to be carried on by the Lessee in or under the sand lands at any point within a distance of 75 meters from any railway line except with the previous permission in writing of the railway administration concerned; and from any bridge on the National Highway or 50 meters from any reservoir, canal or other public works such as public roads and buildings or inhabited site; burial ground etc., . . . shown on the plan thereto annexed except with the previous permission in writing of the State Government or otherwise than in accordance with such instructions, restrictions and condition either general or special which may be attached to such permission. The said

Megharan
 19 04 2010
 Geologist

Smt. E. Indra
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distance of 50 meters shall be measured in the case of a railway, reservoir, or canal horizontally from the outer edge of the bank or outer edge of the cutting, as the case may be and in the case of a building horizontally from the plinth thereof. In the case of village roads no workings shall be carried on within a distance of 10 meters of the outer edge of the cutting except with the previous permission in writing of the State Government. For the purposes of this clause the expression "railway and railway administration" shall have the same meaning as defined in sub section (4) and (6) of section 3 of Indian Railway Act, 1890 (IX of 1890).

- 8. The sides of open workings shall sloped, stepped or secured by the lessee in such a manner as to prevent danger from falls of material, when an open working is worked in steps, steps shall be of sufficient breadth in relation to their height to secure safety. In open workings trees liable to fall and all loose grounds and material shall be removed by the lessee sufficiently far from the edge or otherwise made source in order to prevent danger to persons employed in the quarry.

- 9. If a working place is found to be unsafe all persons shall be withdrawn by the Lessee immediately from the dangerous area and all access to such working place except for the purpose of removing the danger of saving life shall be prevented by securely fencing the full width of all entrances to the place.

- 10. The Lessee shall at all reasonable times allow any officer authorized by the Central Government or by the State Government in that behalf to inspect the said lands and the buildings and plants erected thereon and the Lessee shall assist such persons in conducting the inspection and afford them all information they may reasonably require and shall conform to and observe all orders which the Central and State Governments as the result of such inspection or otherwise, may from time to time pass.

10a. The Lessee shall be responsible for implementing the provisions of the various labour laws applicable, from time to time to the quarry.

Prakashan
19/04/2010
Geologist

Smt. E. Indira
Smt. E. Indira

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11. The Lessee shall not assign or underlet the said lands or any part thereof or the rights or privileges, therein hereby granted or any of them without the previous permission in writing of the competent authority.

11A Where the lease or any right, title or interest therein has been assigned, sublet or transferred as provided in rule 34 read with condition 11, then the person in whose favour such assignment, sublease or transfer has been made shall be responsible for implementing the provisions of the various labour laws applicable, from the time to time, to the quarry.

12. The lease may be surrendered by the Lessee at any time after 3 months notice in writing to the competent authority.

Provided that the lessee has paid all sums dues on account of the lease. Provided further that if the Lessee elect to determine this lease before the expiry of the term of the lease, shall pay in addition to other dues a sum equal to the dead rent payable for the remaining part of the terms of the lease deed.

13. On the expiration of the term of this lease or on its earlier determination under clause 12 the Lessee shall pay to the State Government for all land which has been rendered useless for agriculture through the exercise of the powers demised by this lease such sum as the District Collector may fix as equivalent to the capitalized value or the land revenue of such land rendered useless. The lease shall continue if the sums are not cleared before the date of determination of notice.

14. If the Lessee shall be desirous of taking a further lease of the said lands for a further term of years he shall give three months previous notice in writing of such desire to the competent authority and if the Lessee has duly observed all the conditions of this Lease, the competent authority may agree to renew the lease for such further term and on such terms and conditions as the competent authority may determine which shall be in accordance with the provisions of these rules.

M. Leghacian
19/04/2015
Geologist

Smt. E. Indira
Smt. E. Indira
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Sur. R. 11) - (2)

- 15. If the Lessee shall at any time during the said term use the said lands or any part thereof in any manner other than an authorized by this lease or fail to carry on quarrying operations continuously without sufficient cause of which the competent authority shall be the judge or shall commit a breach of any of the conditions of this lease it shall be lawful for the competent authority to cancel this lease and take possession of the said lands or in the alternative to receive from the lessee such penalty for the breach not exceeding five times the amount of the said yearly dead rent as the competent authority may fix.
- 16. If at the expiration of three calendar months after the expiry of the lease or its sooner determination, there shall remain in or upon the said lands, any engines, machinery, plant buildings, structures and other works erections and conveniences the said minerals or other property which the lessee is entitled to remove from the said lands the same shall if not removed by the lessee within one calendar month after notice in writing requiring their removal be given to the lessee by the competent authority be deemed to become the property of the State Government in such manner as they may deem fit without liability to pay any compensation or to account to the lessee in respect thereof.
- 17. This lease is subject to all rules and regulations which may from time to time be issued by the State Government regulating the working of the quarries and other matters affecting the safety, health and convenience of the lessee's employees or of the public, whether under the Indian Mines Act or otherwise.
- 18. The lessee shall without delay send to the District Collector and the competent authority or the officer authorized by him in this regard report of any accident causing loss of life or serious bodily injuries or seriously affecting or endangering life or property which may at any time occur at or in the said lands in the course of operations under this lease.
- 19. The lessee shall furnish such reports and returns relating to output, labourers employed and other matters as the State Government may prescribe.

Pragharan
 19/04/2010
 Geologist

Smt. E. Indira
 Smt. E. Indira

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-7-

Dr. Raji - (C)

20. The Lessee shall make and pay such reasonable satisfaction and compensation as may be assessed by lawful authority in accordance with the law in force on the subject for all damage, injury or disturbance which may be done by him in exercise of the powers granted by this lease and shall indemnify and shall keep indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.
21. Any condition prescribed in the Kerala Minor Mineral Concession Rules, 1967 but left out in this lease which may be found applicable to the lessee shall be treated as binding on the lessee. In this case anticipated royalty for the mineral at the rate of Rs. 16/- (Rupees Sixteen only) per tonne for a period of one year is Rs. 2,40,000/- (Rupees Two lakhs and Forty thousand only)
22. Dead rent realizable at the rate of Rs. 1st year NIL 2nd year Rs. 200/- 3rd year onwards Rs. 800/- per hectare subject to revision from time to time. Surface rent at the rate of Rs. 100/- (Rupees One hundred only) per hectare for one year is Rs. 263/- (Rupees Two hundred and sixty three only) security deposit is Rs. 1000/- (Rupees One thousand only)

The Schedule above referred to Description of Land

District Taluk sub District	Village	Re-Survey No. Of the area	Area in Hectares
Kozhikode Koyilandy Balussery	Sivapuram	29 Part	2.6305 Hectares

Bounded by Sy. Nos.

On the North by	:	29 pt
On the East by	:	29 pt
On the South by	:	29 pt
On the West by	:	29 pt

Megharan
04/2010
Geologist



CH. Indira
Smt. E. Indira

In witness whereof the parties hereto have set their hands hereunto on the day and year first above written:

Signed by Pragharan
19/07/2010

For and on behalf of the Governor of Kerala

In the presence of

1. P. K. Sasidharan Pragharan
Municipal Revenue Inspector
Dist. Office, Kozhikode

2. Praveen Kumar P Pragharan
D/O
Dist Office of mining Geology
Kozhikode.

Signed by Smt. E. Indira
For and on behalf of the lessees

1. E. Annalish, S/o. E. Madhavan Nair (late) Smt. E. Indira
Eradijil Mangad, Umrikulam
Kozhikode, 673574

2. M. Khalid ~~S/O~~ S/o. G.M. Narayani Noyce,
Mavilampady Mound
P.O. Erannampadan,
Via: Balussery.
673612.

Pragharan
19/07/2010
Geologist



Smt. E. Indira
Smt. E. Indira

Prepared/Manuscript by: E. VIRAPHAEL
Retd. District Registrar (General)
Licence No. DAD 193/SAD 428
House No. 5/1521, Calicut-673 001

Computer print.
Note of corrections: Nil.

Smt. E. Indira

File No. DCKKD/1882/2022-D9 (Computer No. 229157)

ANNEXURE - 6 a

743932/2022/EC DCKKD

Rd(S)

FILE No: PCB/KKD/DO/501/08



KERALA STATE POLLUTION CONTROL BOARD

CONSENT TO OPERATE

UNDER

Water (Prevention & Control of Pollution) Act, 1974

Air (Prevention & Control of Pollution) Act, 1981

&

Environment (Protection) Act, 1986

TO

Consent No: PCB/KKD/DO/CO/501/08

M/s. GEO ENTERPRISES QUARRYING UNIT
KOYILOTTUPARA
VEERIYAMBURAM
IYYAD (PO)
UNNIKULAM (VIA)
KOZHIKODE.

വിവരവാകാശ നിയമപ്രകാരം
നൽകുന്ന ശരിപകർപ്പ്

Handwritten signatures and dates: 13/12/22, 15/12/22

പ്രകൃതി പരിരക്ഷിത ഇൻഫർമേഷൻ ഡെപ്യൂട്ടി സെക്ഷൻ
ജെ.എസ്. (വി) സെക്ഷൻ
കളക്ടറേറ്റ്, കോഴിക്കോട്

1. GENERAL

1	VALIDITY	30.06.2011
2	Name and address of establishment	M/s. Geo Enterprises Quarrying Unit, Koyilattupara, Veeriyamburam Iyyad (PO) Unnikulam (via) Kozhikode
3	Communication	Telephone: 0495 2646764
4	Occupier details	Smt. E. Indira, Managing Partner, Geo Enterprises, P.O. Iyyad, Unnikulam Kozhikode-673574
5	Survey Number	29
6	Village	Sivapuram
7	Taluk	Quilandy
8	District	Kozhikode
9	Panchayat & Ward	Unnikulam Ward: Veeriyamburam, Ward No: 19
10	Category	Red
11	Scale	Small
12	Fee remitted	Rs. 3,420/-
13	Capital Investment	Rs. 5,00,000/-
14	Water consumption	50 l/d
15	Horse power	Compressor-52 HP
16	PRODUCTS	Job Work - Quarrying.

വിവരവാകാശ നിരവധി
നൽകുന്ന അപകർഷ്

Signature
Signature

പ്രൊ. പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & ട്രൈബ്യൂണൽ (പബ്ലിക്) സെക്ഷൻ
കളക്ടറേറ്റ്, കോഴിക്കോട്

3. CONDITIONS AS PER Air (Prevention & Control of Pollution) Act

- 3.1. Record of type, quantity and purpose of consumption of fuel shall be maintained and abstract shall be submitted to the Board along with emission monitoring report.
- 3.2. Water sprinklers shall be provided to suppress spreading of dust.
- 3.3. Raw materials and products shall be transported with proper cover and / or after wetting to prevent spreading of dust.
- 3.4. The suspended particulate matter (SPM) (dust) level at the boundary of the land owned with different adjoining areas excluding roads shall not exceed 200 microgram per cubic metre.
- 3.5. Respirable Suspended Particulate Matter(RSPM)($<10\mu m$) level at boundary of the land owned with different adjoining areas, excluding roads shall not exceed $100\mu g/m^3$,max.
- 3.6. Sound level measured 1 m outside the boundary of the land owned or leased by the consentee whichever is farther shall be 55 dB(A) Leq,max.
- 3.7. All operations likely to produce dust or noise shall be carried out within sufficiently closed and insulated premises.
- 3.8. After excavation at the site is completed, the land may be used for rain water harvesting with protective barriers / any other suitable approved purpose or may be reclaimed.
- 3.9. The consent issued is subject to the conditions specified in the clearances issued by the Mining and Geology Department and Explosive Department as per the provisions of the relevant statutes.

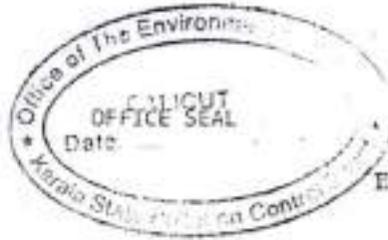
വിവരങ്ങൾ നിയമപ്രകാരം നൽകുന്ന അപകർഷ്

18/08/23
[Handwritten Signature]
 എസ്.എസ്.എസ്. ഇൻഫർമേഷൻ ഓഫീസർ 6
 മെ.എസ് (ഡി) സെക്ഷൻ
 കുളങ്ങര, കോഴിക്കോട്

4. OTHER CONDITIONS:

4.1. Rain water harvesting arrangements shall be provided in the premises.

DATE: 17.07.2008



[Handwritten Signature]
 SIGNATURE & SEAL OF
 ISSUING AUTHORITY
 C.V. JAYASREE
 ENVIRONMENTAL ENGINEER

- Copy to:
1. The Member Secretary.
 2. CEE, RO, Kozhikode.
 3. Stock file.

വിവരങ്ങൾ നിയമപ്രകാരം
 നൽകുന്ന ശരിപകർപ്പ്

[Handwritten Signature]
 17/07/2008
 പാരിസ്ഥിതിക ഇൻഫർമേഷൻ ഓഫീസർ &
 ഡെപ്യൂട്ടി (ഡി) സെക്ഷൻ
 കളക്ടറേറ്റ്, കോഴിക്കോട്

File No. DCKKD/1882/2022-D9 (Computer No. 229157)

ANNEXURE - 6 b

743932/2022/FC DCKKD

FILE No: PCB/KKD/DO/501/2008

R6 (III)



KERALA STATE POLLUTION CONTROL BOARD

INTEGRATED CONSENT TO OPERATE

UNDER

Water (Prevention & Control of Pollution) Act, 1974

Air (Prevention & Control of Pollution) Act, 1981

&

Environment (Protection) Act, 1986

TO

Smt. E. Indira
 Managing partner Geo Enterprises
 Iyyad P.O
 Unnikulam
 Calicut-673574.

(For Geo Enterprises Quarrying Unit
 Koyilottu para
 Iyyad P.O, Unnikulam
 Kozhikode)

Consent No: PCB/KKD/DO/ICO/R1-501/2008

Issue date: 08.08.2011 Valid upto: 01.02.2012

DESPATCHED
 REGISTERED

വിവരങ്ങൾ നിയമപ്രകാരം
 നൽകുന്ന ശരിപകർപ്പ്

11/8/11

Signature

എസ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ &
 ഐ.എസ് (ഡി) സെക്ഷൻ
 കളക്ടറേറ്റ്, കോഴിക്കോട്

1. GENERAL

1	VALIDITY	01.02.2012
2	Name and address of establishment	Geo Enterprises Quarrying Unit Koyilottu para Iyyad P.O, Unnikulam Kozhikode
3	Communication	Telephone: 04962646764
4	Occupier details	Sri. E. Indira Managing partner Geo Enterprises Iyyad P.O Unnikulam Calicut-673574
5	Survey Number	29 Veeriyamburam
6	Village	Sivapuram
7	Taluk	Koyilandi
8	District	Kozhikode
9	Panchayat & Ward	Ward: 5 Unnikulam
10	Category	Red
11	Scale	Small
12	Fee remitted	Rs. 3420/-
13	Capital Investment	Rs. 5 lakh
14	Products/Activities	Quarrying in 6.5 Acers of land



വിവരങ്ങൾ നിയമപ്രകാരം നൽകുന്ന ശുപാർശ

12/03/23
R. J. J. J.

ഇത് പരിശോധിക്കുകയും
മുൻപ്രദേശം സന്ദർശിക്കുകയും
കഴിയുന്ന പക്ഷം കോഴിക്കോട്

2. GENERAL CONDITIONS

- 2.1. This consent is granted subject to the power of the Board to review and make variation in all or any of the conditions.
- 2.2. This consent shall be valid only if the unit is having a valid quarry permit.
- 2.3. No change or alteration of the unit is to be made without the prior permission of the Board. Any change in the particulars furnished in the references or in the identity of the occupier / authorised agent is to be intimated to the Board forthwith.
- 2.4. The applicant shall comply with the instructions that the Board may issue from time to time regarding prevention and control of Air, Water, land and Sound pollution.
- 2.5. For continuing to operate beyond the validity date application for the renewal has to be submitted in the prescribed form between 3 and 4 months in advance of the date of expiry of this order.
- 2.6. Suitable species of trees and curtain plants shall be planted and maintained within and along the periphery of the premises, forming a green belt to improve the environment.
- 2.7. In case of discharge/apprehended discharge of any water/air pollutant or hazardous waste due to any accident or other unforeseen act or event, it shall be immediately intimated to the Board and the consent/authorise shall make all possible efforts to mitigate/ prevent/remediate the discharge.
- 2.8. Signboard showing the name of the establishment shall be displayed at the entrance of the site.
- 2.9. Location of the quarry shall be as shown in the drawing attached. No change or alteration to the above shall be made.
- 2.10. Quarrying operations shall be started only after obtaining the D&O license under the Kerala Panchayath Raj Act for the concerned Local Self Government Institutions and submitting a copy of the same to the District Office of the board.

3. CONDITIONS AS PER Air (Prevention & Control of Pollution) Act

- 3.1. Boundary of the quarry shall be fenced before operation of the quarrying activity.
- 3.2. Water sprinklers shall be provided to suppress spreading of dust.

- 3.3. Raw materials and products shall be transported with proper cover and / or after wetting to prevent spreading of dust.
- 3.4. The particulate matter at the boundary of the premises shall not exceed the National Ambient Air Quality Standard specified for that area.
- 3.5. The sound level measured 1 m outside the boundary of the premises shall not exceed the Ambient Air Quality Standards in respect of Noise applicable to that area.
- 3.6. After excavation at the site is completed, the land may be used for rain water harvesting with protective barriers / any other suitable approved purpose or may be reclaimed.
- 3.7. The consent issued is subject to the conditions specified in the clearances issued by the Mining and Geology Department and Explosive Department as per the provisions of the relevant statutes.
- 3.8. On expiring of the mining and geology permit, new permit shall be provided, failing which this consent will become invalid automatically.

Date: 08.08.2022



OFFICE SEAL

[Handwritten Signature]
P. Vijaya Devi
 Environmental Engineer
 SIGNATURE & SEAL OF
 ISSUING AUTHORITY

- Copy to: 1. Member Secretary, Head Office, Thiruvananthapuram
 2. The Chief Environmental Engineer, Regional Office, Kozhikode.
 ✓ 3. Stock file. *[Handwritten mark]*

വിവരാവകാശ നിയമപ്രകാരം
 നൽകുന്ന അപകർഷ്

[Handwritten Signature]
 15/08/2022
 ഏറ്റുപള്ളിക്ക് ഉൽപാദനം നടത്താൻ അനുമതി
 ജെ.എസ്. പ്രസി. സെഷൻ
 കളക്ടറേറ്റ്, കോഴിക്കോട്

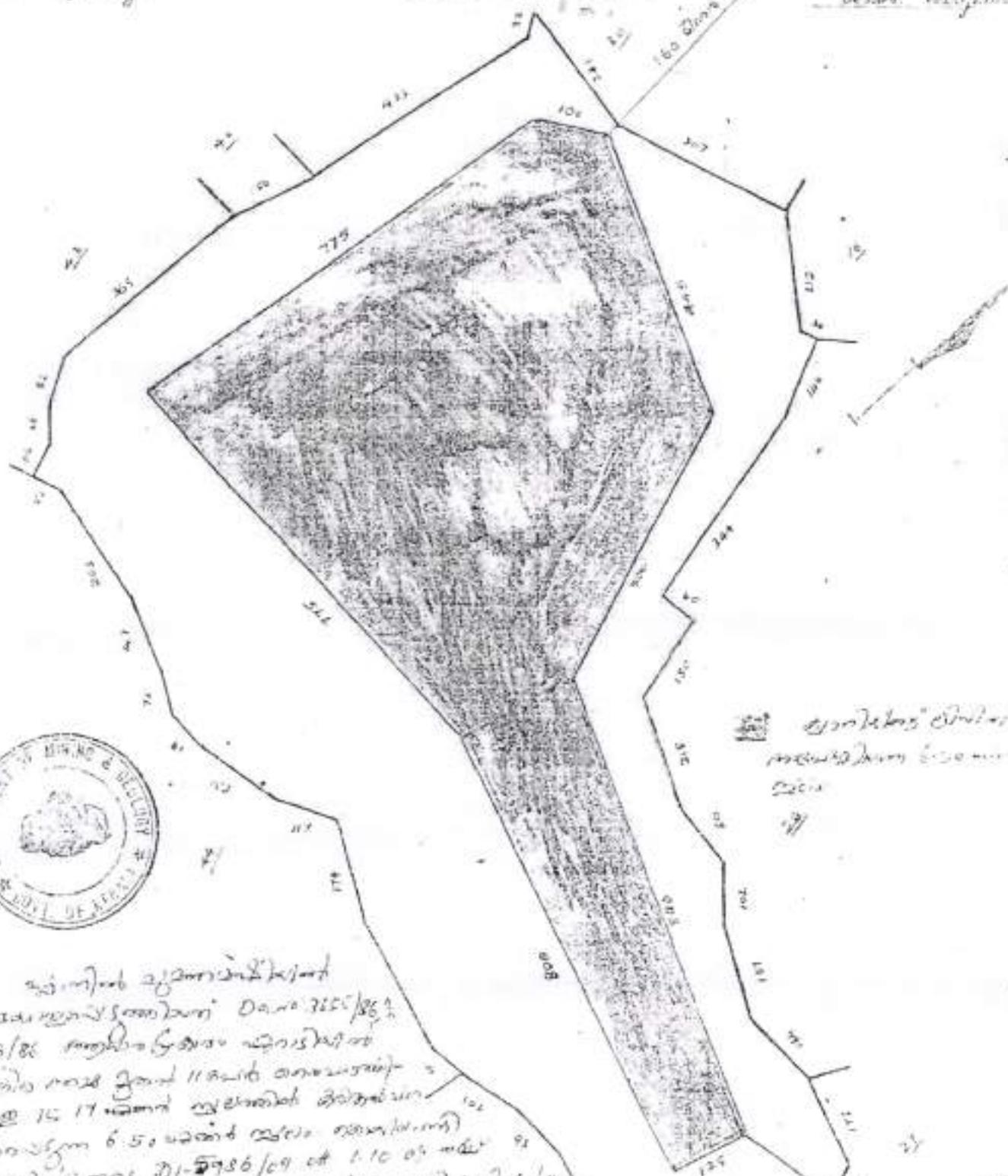
743932/2022/FC DCKKD

1/09

Kochukode
Kongalandy

FIELD NO 29

Village Sengam
Desam Vengaldu



ഇതിൽ ഉൾക്കൊള്ളിച്ച
 അളവുകൾ ശരിയായവയാണെന്ന് 2022.11.15/2022
 1882/2022-FC DCKKD നമ്പർ ഉള്ള
 സർവ്വേ റിപ്പോർട്ട് പ്രകാരം 11 ഹെക്ടർ 10 സെന്റർ
 15 സെന്റർ വരെയുള്ള ഭാഗം
 6.50 ഹെക്ടർ വരെയുള്ള ഭാഗം
 2022.11.15/2022-FC DCKKD നമ്പർ
 ഉള്ള സർവ്വേ റിപ്പോർട്ട് പ്രകാരം
 ശരിയായവയാണെന്ന് ഉറപ്പാക്കിയിരിക്കുന്നു.



എൻ.കെ.എസ്. സിംഗ്
 സർവ്വേ റിപ്പോർട്ടർ
 2022

Handwritten signature and notes in Malayalam script.

വിവരങ്ങൾ നിയമപ്രകാരം
 നൽകുന്ന തരീകരീട്

Handwritten notes and signatures in Malayalam script.

File No. DCKKD/1882/2022-D9 (Computer No. 229157)

743932/2022/FC DCKKD

FILE No: PCB/KKD/DO/501/2008

RA(IV)



KERALA STATE POLLUTION CONTROL BOARD

INTEGRATED CONSENT TO OPERATE (RENEWAL)

UNDER

The Water (Prevention & Control of Pollution) Act, 1974

The Air (Prevention & Control of Pollution) Act, 1981

&

The Environment (Protection) Act, 1986

TO

Smt.	E Indira Managing Partner Geo Enterprises Quarrying Unit Iyyad (PO), Unnikulam (Via) Koyilandi, Kozhikode-673574
(For	Geo Enterprises Quarrying Unit Iyyad (PO), Unnikulam (Via) Koyilandi, Kozhikode-673574)
Consent No: PCB/KKD/DO/ICO-R2/501/2012	
Issue date: 04.05.2012	Valid upto: 01.02.2015

9/5

വിവരവാകാശ നിയമപ്രകാരം നൽകുന്ന അറിവുകൾ

3/7/2020

എ.എസ്. (സി) സെക്ഷൻ
കളക്ടറേറ്റ്, കോഴിക്കോട്

743932/2022/FC DCKKD

1. GENERAL

1	VALIDITY	01.02.2015-
2	Name and address of establishment	Geo Enterprises Quarrying Unit Iyyad (PO), Unnikulam (Via) Koyilandi, Kozhikode-673574
3	Communication	Phone No; 0496-2646764, 9846164201
4	Occupier details	Smt. E Indira Managing Partner Geo Enterprises Quarrying Unit Iyyad (PO), Unnikulam (Via) Koyilandi, Kozhikode-673574
5	Survey Number	29
6	Village	Sivapuram
7	Taluk	Koyilandi
8	District	Kozhikode
9	Panchayat & Ward	Unnikulam Ward: 19
10	Category	Red
11	Scale	Small
12	Capital Investment	Rs.7,50,000/-
13	Fee remitted	Rs. 5010/-
14	Products/Activities	Quarrying in 6.5 acres of of land in survey no 29 of Unnikulam panchayat in Sivapuram village.



വിവരാനുകൂല്യ നിരവധി പ്രകാരം നൽകുന്ന അപകർഷ്ക
Rajesh P K
R. J. J. J.
 മുൻ പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & ബെ.എൻ. (ഡി) സെഷൻ കളക്ടർ, കോഴിക്കോട്

3

2. GENERAL CONDITIONS

- 2.1. This consent is renewed subject to the power of the Board to review and make variation in all or any of the conditions.
- 2.2. No change or alteration of the unit is to be made without the prior permission of the Board. Any change in the particulars furnished in the references or in the identity of the occupier / authorised agent is to be intimated to the Board forthwith.
- 2.3. The applicant shall comply with the instructions that the Board may issue from time to time regarding prevention and control of Air, Water, land and Sound pollution.
- 2.4. For continuing to operate beyond the validity date application for the renewal has to be submitted in the prescribed form between 3 and 4 months in advance of the date of expiry of this order.
- 2.5. Suitable species of trees and curtain plants shall be planted and maintained within and along the periphery of the premises, forming a green belt to improve the environment.
- 2.6. In case of discharge/apprehended discharge of any water/air pollutant or hazardous waste due to any accident or other unforeseen act or event, it shall be immediately intimated to the Board and the consent/authorise shall make all possible efforts to mitigate/ prevent/remediate the discharge.
- 2.7. Signboard showing the name of the establishment shall be displayed at the entrance of the site.
- 2.8. Location of the quarry shall be as shown in the drawing attached. No change or alteration to the above shall be made.
- 2.9. Quarrying operations shall be started only after obtaining the D&O license under the Kerala Panchayath Raj Act for the concerned Local Self Government Institutions and submitting a copy of the same to the District Office of the board.

3. CONDITIONS AS PER The Air (Prevention & Control of Pollution) Act ,1981

- 3.1 Boundary of the quarry shall be fenced before operation of the quarrying activity.
- 3.2. Water sprinklers shall be provided to suppress spreading of dust.
- 3.3. Raw materials and products shall be transported with proper cover and / or after wetting to prevent spreading of dust.


 വിവരാവകാശ നിയമപ്രകാരം
 നൽകുന്ന അനുമതിപത്രം
 പദ്ധതികളുടെ ഉപയോഗത്തിന് ഉപയോഗിക്കാൻ
 ശേഷിയില്ലാത്തതായി തിരിച്ചറിയപ്പെട്ട
 മുള്ളൂർ, കൊല്ലം ജില്ല

743932/2022/FC DCKKD

File No. DCKKD/1882/2022-D9 (Computer No. 229157)

4

- 3.4. The particulate matter at the boundary of the premises shall not exceed the National Ambient Air Quality Standard specified for that area.
- 3.5. The sound level measured 1 m outside the boundary of the premises shall not exceed the Ambient Air Quality Standards in respect of Noise applicable to that area.
- 3.6. After excavation at the site is completed, the land may be used for rain water harvesting with protective barriers / any other suitable approved purpose or may be reclaimed.
- 3.7. The consent issued is subject to the conditions specified in the clearances issued by the Mining and Geology Department and Explosive Department as per the provisions of the relevant statutes.
- 3.8. On expiry of the mining and geology permit, new permit shall be submitted, failing which this consent will become invalid automatically.

Date: 04.05.2012



OFFICE SEAL

[Handwritten Signature]
 SIGNATURE & SEAL OF
 ISSUING AUTHORITY

- Copy to:
- 1. Member Secretary, Head Office, Thiruvananthapuram
 - 2. The Senior Environmental Engineer, Regional Office, Kozhikode.
 - 3. Stock file. *[Handwritten initials]*

വിവരങ്ങൾ നിയമപ്രകാരം നൽകുന്ന തരിപകരിപ്പ്
[Handwritten Signature]
 പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & ഐ എസ് (ഡി) സെക്ഷൻ
 കളക്ടറേറ്റ്, കോഴിക്കോട്

74393272022/FC DCKKD



KERALA STATE POLLUTION CONTROL BOARD

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

കോഴിക്കോട് ജില്ലാ ഓഫീസ്

DISTRICT OFFICE, KOZHIKODE

3rd FLOOR, ZAMORIN'S SQUARE, LINK ROAD, KOZHIKODE - 673 002

Telefax: 2300745, 46, 47

www.keralapcb.org



Ref.No. PCB/KKD/DO/501/2008

Date: 08.05.2015

CONSENT VARIATION ORDER

(Issued under the Water (Prevention & Control of Pollution) Act, 1974, The Air(Prevention & Control of Pollution) Act 1981, the Environment(Protection) Act 1986

- Ref: - 1. Integrated Consent to Operate Renewal no. PCB /KKD/DO/ICO-R3/ 501/2015 dated 03.02.2015
- 2. Applicant's letter received on 24.04.2015

The Integrated Consent to Operate issued vide reference (1) above to Smt. E Indira, Managing Partner,Geo Enterprises Quarrying Unit,Iyyad Post,Unnikulam,Kozhikode - 673 574 for operating a unit named Geo Enterprises Quarrying Unit, Iyyad Post, Unnikulam Via,Koyilandy,,Kozhikode-673574 is modified to the following extent:

Item No 1.1

Validity 09.02.2016

The consent issued from the Board will be valid only for a period during the period when all other statutory or necessary clearance from the concerned authorities are valid. The consent issued from the Board is only with respect to the powers vested under the Water (prevention & control of pollution) Act 1974; Air (Prevention & Control of pollution) Act 1981 and rules there under. The operation of the unit shall be commenced only after obtaining clearance from all concerned authorities.

All other conditions in the consent to operate referred above remain unchanged.

Office seal

Signature

NAME & DESIGNATION OF ISSUING OFFICER

To

Smt. E Indira,
Managing Partner,
Geo Enterprises Quarrying Unit,
Iyyad Post, Unnikulam,
Kozhikode - 673 574.

വിവരവാകാശ നിയമപ്രകാരം നൽകുന്ന അപകർഷ്

Handwritten signature and date 08/05/2015

Handwritten text: ഫുൾ പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & ജെ.എസ് (ഡി) സെക്ഷൻ കളക്ടർ, കോഴിക്കോട്

R6 (VII)



KERALA STATE POLLUTION CONTROL BOARD

FILE NO. :PCB/KKD/DO/501/2008

Date of issue :17/02/2018

INTEGRATED CONSENT TO OPERATE - RENEWAL

Consent No : PCB/KKD/DO/ICO-1.4/501/2018

Ref : 1.Your online application no. 6573730 dated 06.01.2018

2. Consent variation order ref No. PCB/KKD/DO/501/2008 dated 09.11.2015 valid up to 01.02.2018.

The 'Integrated Consent to Operate' issued as per reference above to M/s GEO ENTERPRISES QUARRYING UNIT,IYYAD POST,UNNIKULAM VIA,KOYILANDI is hereby renewed up to 18/04/2022 and issued to M/s GEO ENTERPRISES QUARRYING UNIT,IYYAD POST,UNNIKULAM VIA,KOYILANDI The consent(s)/ variation order(s) cited under reference are integral part of this renewal order and this order is subject to the conditions stipulated therein and the following modifications/ additions.

I. GENERAL

S.No.	Items	Description
1	Validity	18.04.2022
2	Activity	Quarrying in 2.5857Ha of land in resurvey no 29 of Sivapuram village

II. Stack Details

Stack No.	Source of Emission	Emission Rate(Nm3/Hr)	Stack Height above		Control Equipment
			Ground Level(In Meters)	Roof Level(In Meters)	

III. CONDITIONS

3.1. Condition no 2.4 of the consent referred 2nd above is modified to the extent that for renewal of the integrated consent application in the prescribed form shall be submitted to the Board on or before 18.01.2022 through the web portal of the Board (krocmms.nic.in) for Online Consent Management & Monitoring System. Late application will be accepted only with fine/late fee as applicable.

3.2.This consent is issued based on the judgment of Honourable high court on WP(c) no 21713 of 2017(L).quarrying lease issued on 19.04.2010,valid up to 18.04.2022.

വീവരവകാശ നിയന്ത്രണ ബോർഡ്
നൽകുന്ന തിരുത്തലുകൾ

Handwritten signatures and dates: 15/03/2023, 15/03/2023, and other illegible text.

All other conditions of the Integrated Consent to Operate issued as per reference above remain unchanged.

DATE :17/02/2018

SIGNATURE & SEAL OF ISSUING AUTHORITY
ENVIRONMENTAL ENGINEER
DISTRICT OFFICE KOZHIKODE



SHABNA
KUSHE
SHEKHAR

Digitally signed
by SHABNA
KUSHE SHEKHAR
Date: 2018.02.17
13:13:17 +05'30'

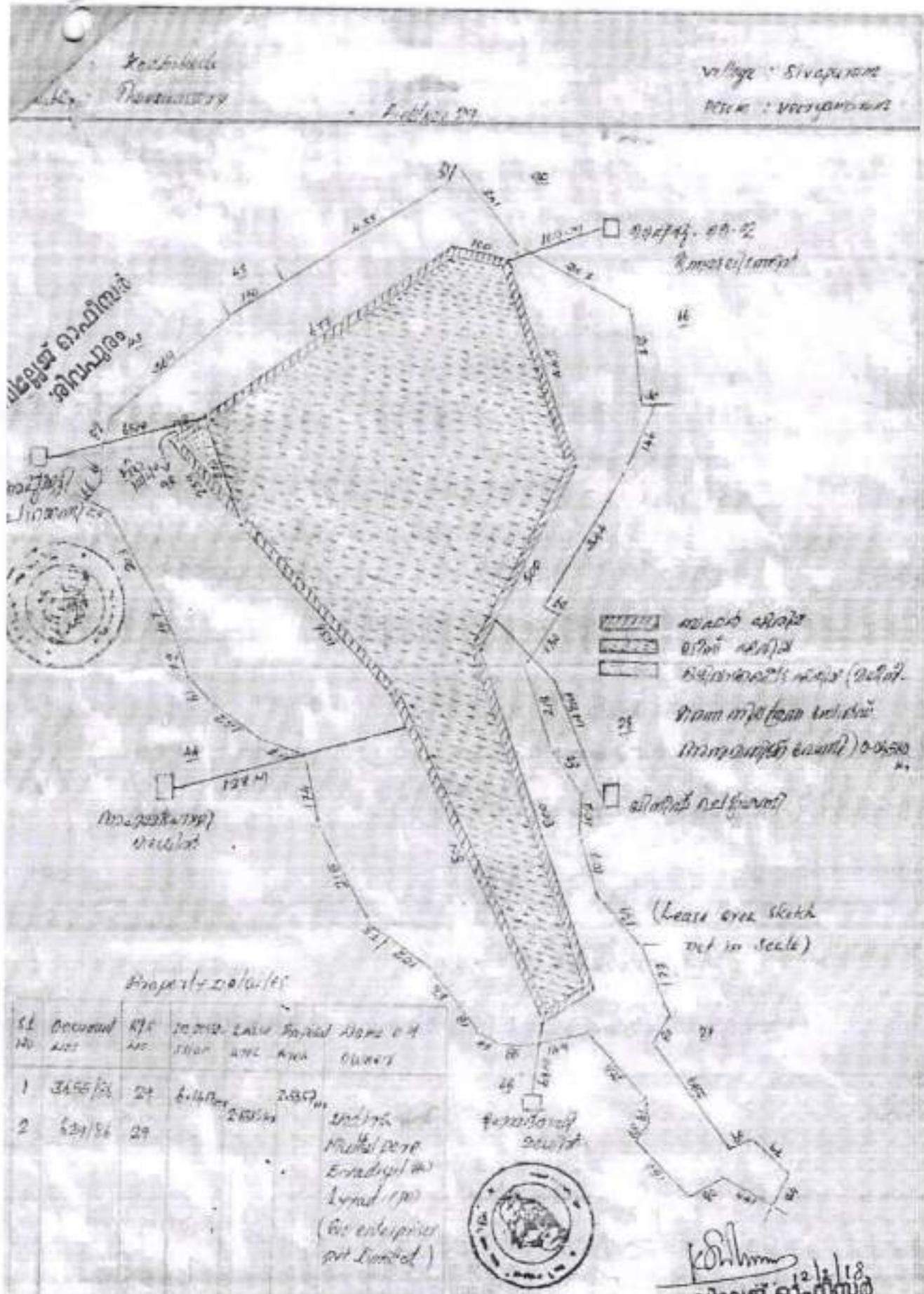
To
E INDIRA
MANAGING PARTNER
GEO ENTERPRISES QUARRYING UNIT
IYYAD POST
UNNIKULAM-673574

1. This digitally signed document is legally valid as per the Information Technology Act 2000
2. For verifying this document please go to krocmms.nic.in and search using date of issue name of the unit/Application Number in "Consent Granted Applications" link in the home page of the Board's Online Consent Management and Monitoring System.

വിവരവാകാശ നിർമ്മാണവും
നൽകുന്ന അഭിപ്രായം

Handwritten signature and stamp in Malayalam script.

743932/2022/FC DCKKD



വിവരവകാശ നിരവധി...
നഷ്ടകരമായ അപകടം...
 16/07/2023
 ...
 ...

2015 (2) KLT 78

*Hon'ble Ag. Chief Justice, Mr. Justice Ashok Bhushan &
Hon'ble Mr. Justice A.M. Shaffique*

All Kerala River Protection Council v. State of Kerala

W.P.(C) No.31148 of 2014 & connected cases

Decided on 23rd March, 2015

Minor Mineral Concession Rules, 1967 (Kerala), Rules 4 & 29 — Mines and Minerals (Development and Regulation) Act, 1957, Section 15 — Environmental Impact Assessment Notification dated 14.9.2006 — Where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.5.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required.

Held: In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities. (ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues. (iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease. (iv) Judgment of the Apex Court in *Deepak Kumar's* case ((2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629)) did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance. (v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities. (vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit. (vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests. (viii) As per Rule 68 no

All Kerala River Protection Council v. State of Kerala (Ashok Bhushan , Ag. C.J.) 79

mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan. (para. 82)

Environment (Protection) Act, 1986, Section 3(1) — Environment (Protection) Rules 1986, Rules, 5(3) & (4) — Environmental Impact Assessment Notification dated 14.9.2006 — Notification dated 14.09.2006 was not applicable with regard to lease of minor minerals which were in existence on the date of issuance of the Notification dated 14.09.2006.

Government of India, Ministry of Environment and Forests clarified that all such mining projects which did not require environmental clearance under the E.I.A. Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal. As noted above, in the 1994 Notification mining of minor mineral was not included. Thus for mining activity regarding minor mineral no environmental clearance was required under the 1994 Notification. Hence by clarification existing minor leases were to continue till renewal of mining lease falls due. Thus for existing leases, the Central Government clarified that environmental clearance has to be obtained when renewal falls due. In view of the aforesaid discussion, we accept the argument of the counsel appearing for the quarry owners that Notification dated 14.09.2006 was not applicable with regard to lease of minor minerals which were in existence on the date of issuance of the Notification dated 14.09.2006. (para.50)

Environment (Protection) Act, 1986, Section 3(1) — Environment (Protection) Rules, 1986, Rules 5(3) & (4) – Minor Mineral Concession Rules, 1967 (Kerala), Rule 29 – Environmental Impact Assessment Notification dated 14.9.2006 — Even for lease area less than 5 hectares, after the judgment of the Apex Court in *Deepak Kumar's case* (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) environmental clearance is required for grant/renewal of mining lease.

After the judgment of the Apex Court dated 27.02.2012 in *Deepak Kumar's case* (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) Government of India, Ministry of Environment and Forests came up with office memorandum dated 18.05.2012. By direction dated 18.5.2012, the Government of India included mining areas of less than 5 hectares under the environment regime as contemplated by Notification dated 14.9.2006. Government of India directed that mining projects with lease area upto less than 50 hectares including projects of minor mineral with lease area less than 5 hectares would be treated as category B. The above direction of Government of India is clearly referred to its power under Section 5 of the 1986 Act providing for environmental clearance for lease area less than 5 hectares. Thus there remains no doubt that even for lease area less than 5 hectares, after the judgment of the Apex Court in *Deepak Kumar's case* (supra) environmental clearance is required for grant/renewal of mining lease. (paras.53 & 54)

Environment (Protection) Act, 1986, Section 3(1) — Environment (Protection) Rules, 1986, Rules 5(3) & (4) — Environmental Impact Assessment Notification

dated 14.9.2006 — There are no words in the Notification which may indicate that the Notification intend to stop all existing projects or activities.

Although the Notification used two words “construction of new projects or activities” before the word ‘projects’, the word ‘new’ is added but whether the word ‘activities’ was also be read in the conjunction with new is the issue to be answered. Clarification of the above issue is contained in paragraph 2 of the Notification which contains heading “Requirements of prior Environmental Clearance”. Paragraph 2 begins with the words “the following projects or activities shall require prior environmental clearance. The word ‘project’ or ‘activity’ is not suffixed with the word ‘new’. However, projects have been detailed in paragraph 2(i) to (iii). Paragraph 2(i) refers to ‘all new projects or activities’ listed in the Schedule to this notification and paragraph 2(ii) relates to “Expansion and modernization of existing projects or activities”. Thus paragraph 2(i) relates to all projects or activities and paragraph 2(ii) relates to expansion or modernization of existing projects or activities. Thus new projects or activities or existing projects or activities have been differently dealt with whereas for existing projects or activities environmental clearance is contemplated in the event of expansion and modernization whereas for new projects or activities environmental clearance is contemplated before carrying out mining operations. There are no words in the Notification which may indicate that the Notification intend to stop all existing projects or activities. **(para.47 & 48)**

AIR 1955 SC 604 & AIR 1960 SC 610

Relied on

Minor Mineral Concession Rules, 2015 (Kerala), Proviso to Rule 12 — After the judgment of the Apex Court in *Deepak Kumar’s* case (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) and the order dated 18.05.2012 all mining operations required environmental clearance with regard to area less than 5 hectares for obtaining permit thereafter or renewal environmental clearance is required — The concept of valid permit as on 9.1.2015 under the proviso to Rule 12 has to be read accordingly.

One submission which has been pressed by the counsel for the intervenors is that proviso has been engrafted in Rule 12 to the effect that environmental clearance required under rule 9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January 2015. Whether the permit was valid as on 09.01.2015 is the question which has to be examined with regard to the facts of each case/each permit. We having held that after the judgment of the Apex Court in *Deepak Kumar’s* case (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) and the order of the Government of India, Ministry of Environment and Forests dated 18.05.2012 all mining operations required environmental clearance with regard to area less than 5 hectares for obtaining permit thereafter or renewal environmental clearance is required. We thus are of the view that the concept of valid permit as on 09.01.2015 under the proviso to Rule 12 has to be read accordingly. There being no challenge before us with regard to any of the 2015 Rules, it is not necessary for us to say anything more. **(para.71)**

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Environment (Protection) Act, 1986, Section 3(1) — Environment (Protection) Rules, 1986, Rules 5(3) & (4) – Environmental Impact Assessment Notification dated 14.9.2006 — Deepak Kumar’s case (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) — The scope and meaning of the words “be granted” and “henceforth” used in the order dated 27.2. 2012 in Deepak Kumar’s case.

Order of the Apex Court in *Deepak Kumar’s* case (2012 (1) KLT Suppl.60 (SC) = (2012) 4 SCC 629) is in the nature of an interim order which is clear by the words used “in the meanwhile”. The order directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance from MoEF. The order thus used the words “be granted” which clearly meant that it referred to the leases to be granted, after the Government of India’s order dated 18.05.2012. Paragraph 3 of the order used the word “henceforth” which clearly meant that the order was to be operated with regard to leases and renewals which were to be granted for an area less than 5 hectares after the issue of the order. (para.56)

Mines and Minerals (Development and Regulation) Act, 1957, Section 15 — Minor Mineral Concession Rules, 1967 (Kerala), Rules 4 & 29 — Environmental Impact Assessment Notification dated 14.9.2006 — Notification dated 14.09.2006 clearly covered mining operation by mining lease/mining permit/quarry permit.

One of the submissions which has been raised before us is that both the Notification dated 14.09.2006 and the judgment of the Apex Court in *Deepak Kumar’s* case (2012 (1) KLT Suppl.60 (SC) = (2012) 4 SCC 629) used the word ‘lease’, hence neither the Notification dated 14.09.2006 nor the judgment of the Apex Court in *Deepak Kumar’s* case (supra) was applicable with regard to mining permits/quarry permits which are granted under the 1967 Rules. As noted above, 1967 Rules have been framed in exercise of the powers under Section 15 of the 1957 Act. Section 15 of the 1957 Act uses the words “quarry leases, mining leases or other mineral concessions” which words were substituted by Act 56 of 1972 with effect from 12.09.1972. Section 15 is thus clear that the State Government is empowered to make Rules for regulating grant of leases or other mineral concessions. Mining permit is nothing but a mineral concession and included in the words “other mineral concessions”. The State was thus fully empowered to grant mining leases of minor minerals including mining permit. Mining operations has been defined in Section 3(d) as any operations undertaken for the purpose of mining any mineral. Notification dated 14.09.2006 uses the words “mining of minerals”. Heading 1 provides “mining, extraction of natural resources...”. The Notification cannot be held confined only to mining operation by a mining lease. Mining operation is a wider term which shall include mining operation by any means, i.e., mining lease/quarrying lease/mining permit etc. We thus are of the view that Notification dated 14.09.2006 clearly covered mining operation by mining lease/mining permit/quarry permit. Government of India by order dated 18.05.2012 having made, obtaining prior environmental clearance mandatory for an area of less than 5 hectares the same shall apply to any kind of mining activity including a mining permit. (para. 57)

Environment (Protection) Act, 1986, Section 3(1) — Environment (Protection) Rules 1986, Rules, 5(3) & (4) — Environmental Impact Assessment Notification dated 14.9.2006 — Minor Mineral Concession Rules 1967 (Kerala), Rule 4 — Notification dated 14.09.2006 never intended that mining concession by mining permit should be kept out of regulatory measure.

To accept the submission of the learned counsel for the quarry owners that the Notification dated 14.09.2006 is not attracted on the mining permit, permitting the environment to be adversely affected damage by continuous exploitation of natural resources under the mining permit which runs counter to the very object and purpose of issuance of Notification dated 14.09.2006. The concept of strict regulatory regime for minor mineral shall explode if one category of mineral concession, i.e., mining permits are permitted to excavate to deplete natural resources without there being any environmental regulatory measures. Notification dated 14.09.2006 never intended that mining concession by mining permit should be kept out of regulatory measure. Neither the said Notification can be interpreted in the above manner nor the same shall advance the object of protection of environment which is the spirit of the enactment and judgment of the Apex Court in *Deepak Kumar's* case (supra). (para. 60)

Minor Mineral Concession Rules, 2015 (Kerala) — Government Order dated 23.11.2012 and 11.12.2012 — Office memorandum dated 18.05.2012 — The scope and effect of the Government Orders dated 23.11.2012 and 11.12.2012 — Explained.

As noted the 2015 Rules have already enforced in the State of Kerala, now all mining permits, mining lease and quarry lease and other mineral concessions have to be in accordance with the 2015 Rules. Thus all mining operations have to be conducted in accordance with the 2015 Rules as well as the observations made by us in this judgment. Exhibits P3 and P4, Government Orders dated 23.11.2012 and 11.12.2012 have been prayed to be quashed. We have already held that after the judgment of the Apex Court in *Deepak Kumar's* case (2012 (1) KLT Suppl.60 (SC) = (2012) 4 SCC 629) and the order of the Government of India, Ministry of Environment and Forest dated 18.05.2012, all grant of mining lease/mining permit for less than 5 hectares have to be in accordance with the environmental clearance as envisaged by the Notification dated 14.09.2006. Thus both the aforesaid Government Orders have to be read accordingly and further the 2015 Rules having framed and enforced by the State, all actions regarding mining operations have to be done in accordance with the 2015 Rules. (para.74)

Mines and Minerals (Development and Regulation) Act, 1957, Sections 4, 14 & 15 — The submission that after amendment to Section 14, no mining operations can be allowed by a mining permit and mining operation is to be done only except under a mining lease has to be rejected.

It is submitted that permits are contemplated only for reconnaissance. Section 4(1) contains an injunction that “no person shall undertake any reconnaissance, prospecting or mining operations in any area”. Thus the predominant object of Section 4 is to prohibit undertaking of any mining operation in any area except by a mining lease. When Section 4 has been made applicable to the minor minerals, Section 15 of the

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1957 Act has also to be given due weight. Under Section 15, the State is empowered to make rules in respect of minor minerals, i.e., quarry leases, mining leases or other mineral concessions. Provisions of Sections 4, 14 and 15 have to be given harmonious construction to advance the object of the 1957 Act. Section 4 cannot be read in a manner that although there is prohibition in undertaking of mining operation by mining lease there is no prohibition of mining by mining permit. Any such interpretation shall be destructive of the very object of Section. We thus are of the view that the submission that after amendment to Section 14, no mining operations can be allowed by a mining permit and mining operation is to be done only except under a mining lease has to be rejected. Restriction under the Section thus has to be read as a prohibition of all mining operations whether under a mining lease or by any other kind of mineral concession. **(para. 63)**

Minor Mineral Concession Rules, 2015 (Kerala) — The Rule, having coming into from 07.02.2015, all subsequent acts by the State has to be conducted in accordance with the statutory Rules.

From the 2015 Rules it is clear that now the State has specifically prescribed requirement of environmental clearance for grant of mining permit as well as mining lease/quarrying lease. Rule having coming into from 7.2.2015 all subsequent acts by the State has to be conducted in accordance with the statutory Rules. Order of the Apex Court in *Deepak Kumar's* case (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) which was issued as an interim measure has served its main purpose since requirement of obtaining environmental clearance has been engrafted in the 2015 Rules. **(para.70)**

Minor Mineral Concession Rules, 2015 (Kerala), Rules 66 & 68 — Rules 66 and 68 have to be read together and Rule 66 is a category exempted from the mandatory requirement as provided in Rule 68.

Rule 68 thus clearly meant carrying out of the mining operations in accordance with the mining plan. Rule 66 thus has to be read along with Rule 68 and Rule 66 engraft an exception to the general Rule 68 which required that every quarrying operation be in accordance with the mining plan. If it is held that Rule 68 is to override any other Rule of the 2015 Rules pertaining to mining plan, the same shall not be in accordance with the intend and content of Rule 68. We thus are of the view of that Rules 66 and 68 have to be read together and Rule 66 is a category exempted from the mandatory requirement as provided in Rule 68. **(para.72)**

Environment (Protection) Act, 1986, Section 3(1) — Environment (Protection) Rules, 1986, Rules 5(3) & (4) – Environmental Impact Assessment Notification dated 14.9.2006 — Development and protection of environment both have to be given due importance.

Development and protection of environment both have to be given due importance. The theory of sustainable development has been propounded to strike a balance between development and protection of environment. Protection of environment being constitutional obligation, the State cannot sacrifice the same in the name of development. **(para. 60)**

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JUDGMENT

Ashok Bhushan, Ag, C.J.

This bunch of Writ Petitions raises important issues relating to mining/quarrying in the State of Kerala. The issues have assumed more importance due to competing claim between the development by over exploitation of natural resources and protection of natural resources. Saving the environment and ecology is not only the fundamental duty of every citizen but it is also the obligation of every State. Writ

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Petitions listed before us consist of Writ Petitions filed as Public Interest Litigations, Police Protection Cases and Writ Petitions filed by and against quarry owners. Learned Single Judges while hearing a few of these Writ Petitions have also made reference to Division Bench for authoritative pronouncement on different environmental issues.

2. All the Writ Petitions and one Writ Appeal can be divided into the following five groups:

(I) Writ Petitions filed as Public Interest Litigations raising issues of unauthorised functioning of quarries in violation of the decision in *Deepak Kumar and Others v. State of Haryana & Ors.* (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) and in violation of the Notifications issued by the Government of India, Ministry of Environment and Forests under the Environment (Protection) Act, 1986.

(II) Different Writ Petitions questioning the quarrying operations being conducted by the respondents to the Writ Petitions in violation of the decision in *Deepak Kumar's* case (supra) and in violation of the Notifications issued by the Government of India, Ministry of Environment and Forests.

(III) Writ Petitions filed by different quarry owners/permit owners who have been granted mining/quarrying lease/permit challenging different actions of individuals and State due to which they are unable to smoothly conduct the quarrying/mining operations.

(IV) Writ Petitions which have been filed seeking police protection to conduct quarrying/mining.

(V) Two miscellaneous Writ Petitions and one Writ Appeal.

3. The first group of Writ Petitions consists of 3 Public Interest Litigations, being W.P.(C) Nos.31148 of 2014, 20601 of 2014 and 4471 of 2015. Writ Petition No.31148 of 2014 (*All Kerala River Protection Council, Aluva v. State of Kerala and Others*) is being treated as the leading Writ Petition among this group. It is necessary to note the pleadings and reliefs in the leading Writ Petition for considering and deciding the various issues raised in this bunch of Writ Petitions. Petitioners an organisation registered with the main purpose of saving the environment of the State including all natural resources. This Public Interest Litigation claims to have been filed to protect the resources of the State from excessive mining operations being carried out in violation of the statutory provisions. It is pleaded that the excessive mining operations cause serious threat to the ecology. Reference to the judgment of Apex Court in *Deepak Kumar's* case (supra) has been made wherein the Apex Court had laid down that for grant of mining lease of minor minerals, environmental clearance is essential which is a pre-condition for grant or renewal of the mining lease. It is stated that the Government of India, Ministry of Environment and Forests has issued various directions under the Environment Protection Act, 1986 (hereinafter

after referred to as “the 1986 Act”) making it mandatory to obtain environmental clearance for all mining operations. Reference has been made to order dated 18.05.2012. It is pleaded that mining of minor minerals is being carried out from lands and 44 rivers in the State. Referring to Section 4 of the Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter referred to as “the 1957 Act”) it is pleaded that no mining operation can be carried out except in accordance with the mining lease under Section 4 of the 1957 Act. It is pleaded that issuance of mining permit for mining operations is not permissible under law. Amendment made in Section 14 by Amendment Act 1986 has been referred to. It is stated that permits issued by respondents 1 and 2 for mining operation after 20.12.1999 are contrary to Section 4 of the 1957 Act. It is pleaded that the directions issued by the Apex Court in *Deepak Kumar’s* case (supra) are being subverted by issuing mining permits by the State Government. Reference has been made to Government Order dated 23.11.2012 issued by the State which ordered that short term permits can be granted for the existing quarries for extraction of minor minerals from private holdings for a period not exceeding one year, if the applicant concerned had complied with all other conditions for issuance of the permit as well the conditions regarding environmental clearance stipulated in the order of the Supreme Court. Government order dated 23.11.2012 was modified by a subsequent Government order dated 11.12.2012 by which it was clarified that short term permits can be granted in respect of minor minerals in private holdings which are not on leases on Government lands subject to satisfaction of the various requirements specified under the Kerala Minor Mineral Concession Rules, 1967 (hereinafter referred to as “the 1967 Rules”). Amendment made to Rule 8 of the 1967 Rules by Notification dated 01.07.2014 has also been referred to which provided that quarrying permit can be obtained for extraction of ordinary earth used for filling or leveling purposes in construction of embankments, roads, railways or buildings. Petitioner pleaded that if mining operations are carried out without conducting environment impact assessment, it will cause serious threat to the ecology of this God’s own country. It is pleaded that present mining activities are being done causing severe damage to the ecology of the area. With the aforesaid pleadings, petitioner prayed for the following reliefs:

(i) To issue a writ, direction or order in the nature of mandamus commanding respondents 1 and 2 to see that all quarrying operations in the Kerala State shall be permitted by lease by scrupulously following Exhibit P1 order in its letter and spirit.

(ii) To issue a writ, direction or order in the nature of prohibition or such other appropriate writ, direction or order restraining respondents 1 and 2 and its subordinate officers from issuing permits and licences invoking the provisions of Kerala Minor Mineral Concession Rules, 1967 for the purpose of mining operations of minor minerals in the State.

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(iii) To issue a writ of certiorari calling for the records leading to Exhibits P3, P4 and P5 amendments and quash the same.

(iv) Such other reliefs which this Hon'ble Court deems fit and necessary in the circumstances of the case and the costs of this case so as to protect the excessive mining activities being carried out in the State of Kerala without conducting the environment impact assessment as contemplated in Exhibit P1 order.”

4. In the Writ Petition, Registered Metal Crusher Unit Owners Association and various individuals who have been granted mining permit/lease have been impleaded as additional respondents. Counter affidavits have been filed by additional respondents taking the stand that grant of mining permit is fully permissible in accordance with the 1957 Act and no environmental clearance is necessary for grant of mining permit.

5. Learned Senior Government Pleader has filed an adoption memo to adopt the counter affidavit filed by the State in W.P.(C) No.6338 of 2014 which has been taken on record. The State in its counter affidavit has stated that as per the directions of the Apex Court in *Deepak Kumar's* case (supra), the Government has framed Rules, namely, the Kerala Minor Mineral Concession Rules, 2015. It is averred in the counter affidavit that recommendations made by the Apex Court in *Deepak Kumar's case* (supra) had been incorporated in the Rules. It is stated that in view of the subsequent developments, i.e., framing of the 2015 Rules there is no necessity to consider the questions which have been referred by the learned Single Judge by his order dated 12.03.2014.

6. Another Public Interest Litigation is W.P.(C) No.20601 of 2014 (*V.K. Murali and Another v. Kizakkancherry Grama Panchayat & Ors.*) which petition has been filed by two residents of the aforesaid Panchayat. Grievance has been regarding unauthorised functioning of granite quarrying units conducted by respondents 7 and 8 ignoring the various environmental enactments and provisions of the 1957 Act and 1967 Rules. Petitioners claim to have submitted a complaint to the Deputy Director of Panchayats, Palakkad dated 26.2.2014. It is pleaded that a decision was taken by the Grama Panchayat on 29.4.2014 not to renew the licence of the 7th respondent. However, subsequently, the Panchayat has renewed the licence of the 7th respondent against which the 1st petitioner has filed a statutory appeal under the Panchayat Raj Act vide Memorandum of Appeal dated 28.07.2014. Petitioners have prayed in the Writ Petition to quash Ext.P2 decision taken by the Panchayat to renew the licence for quarrying unit and further to command the 1st respondent Panchayat to stop functioning of the quarrying units of respondents 7 and 8.

7. The third Public Interest Litigation is W.P.(C) No.4471 of 2015 (*Andrews K.J. v. State of Kerala & Ors.*). Petitioner in this Writ Petition has referred to the 2015 Rules gazetted on 07.02.2015. Referring to the directions issued by the Apex

Court in *Deepak Kumar's* case (supra) it is pleaded that environmental clearance can be obtained only on production of mining plan. Reference has been made to Office Memorandum dated 24.12.2013 issued by the Government of India, Ministry of Environment and Forests wherein it is made mandatory to obtain environmental clearance for all quarrying lease, irrespective of the extent of the lease area. Reply received under the Right to Information Act has been filed (Ext.P2) by which it was informed by the Deputy Director of Mining and Geology that no mining plan has been approved from the office. It has been further pleaded that by reply dated 03.02.2015 it was informed by the Department of Environment and Climate Change, Thiruvananthapuram that environmental clearance has been issued to 64 quarries upto 03.11.2014 by the State Level Environment Impact Assessment Authority. Reference to the proceeding dated 22.02.2013 has also been made which is filed as Exhibit P4. It is pleaded that the decision taken by the SEIAA to issue environmental clearance is vitiated since the applications do not follow the pre-requisite, i.e., mining plan. Decision taken to grant environmental clearance for mining operations have no legal sanctity which is liable to be interfered with. It has been pleaded that in 2015 Rules persons who are having the mining permit are required to take environmental clearance only after expiry of the lease period which is an attempt to overreach the specific direction contained in the judgment of the Apex Court in *Deepak Kumar's* case (supra) and Ext.P1, Office Memorandum dated 24.12.2013. The 2015 Rules further provided that persons who are having the mining permit should submit mining plan within a period of one year till 01.04.2016 which is an ingenious method resorted to facilitate the lease holders to continue their operation without possessing a valid environmental clearance. Rule 66 of the 2015 Rules is attacked alleging it to be colourable exercise of power. It is contended that Rules have not been issued in this regard in accordance with the directions issued by the Apex Court in *Deepak Kumar's* case (supra). In the Writ Petition although there was challenge to Rule 33 read with Rules 66, 10(f) and 40(i) of the 2015 Rules learned counsel for the petitioners, Shri P.B.Krishnan submitted that he confines his prayers in the Writ Petition only to the effect that Rule 68 be interpreted to mean that for carrying out all mining operations, a mining plan is mandatory and Rule 68 be read to the effect that no lessee is to carry out mining operations without approved plan. It is submitted that he confines his prayer in the Writ Petition to interpretation of Rule 68 in the above manner.

8. Group-II Writ Petitions consists of W.P.(C) No.6338 of 2014, W.P.(C) No.6361 of 2014, W.P.(C) No.33413 of 2014, W.P.(C) No.4434 of 2014 and W.P.(C) No.34989 of 2014. All the Writ Petitions of this group have been filed by petitioners who pray for stopping quarry/mining operations by the respondents. Petitioners who

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are residents of different localities have raised objection regarding running of quarries which according to the petitioners are in violation of the directions of the Apex Court in *Deepak Kumar's case* (supra) and the directions issued by the Central Government. It was pleaded that no mining/quarrying operations can be continued without there being any environmental clearance. Learned Single Judge while hearing Writ Petition Nos.4783, 6338 and 6361 of 2014 made a reference by order dated 12.03.2014 for hearing the said Writ Petitions by a Division Bench. It is sufficient to note the facts and pleadings in W.P(C) No.6338 of 2014 to understand the nature of pleadings and prayers made in all the Writ Petitions of this group.

9. W.P.(C) No.6338 of 2014 (*A.Abdul Kabeer and Another v. State of Kerala and Others*) has been filed by the petitioners who claim to be the local residents of Arkannur desom who feel aggrieved by the illegal and unauthorised quarrying activities of building granite stones by respondents 9 and 10. It is pleaded that respondents 9 and 10 have encroached upon Government land and they are conducting illegal quarrying activities in Government as well as private lands. Petitioners claim to have submitted representation on 03.10.2013 to the Land Revenue Commissioner as well as to the Government. Member of Elamad Grama Panchayat of Ward No.XII preferred a complaint to the Director of Environment and Climate Change, Thiruvananthapuram requesting that no environment clearance should be given to respondents 9 and 10 for conducting quarrying operations. Resolution dated 29.03.2012 has also been claimed to have passed by the Grama Panchayat requesting the Government to stop quarrying activities of respondents 9 and 10. It is submitted that respondents 9 and 10 are causing grave environmental problems and causing injury, both physical as well as to the properties of the residents of the locality and petitioners. Reference to Crime No.1958 of 2013 against respondents 9 and 10 has also been made which was registered for illegal mining activities in the Government land. Order dated 28.09.2012 of the Revenue Divisional Officer, Kollam has also been referred to wherein the R.D.O. has held that respondents 9 and 10 had conducted illegal quarrying encroaching Government lands. It is pleaded that as per Section 4 of the 1957 Act, quarrying is permissible only on the strength of quarry/mining lease whereas respondents 9 and 10 have been allowed to conduct quarrying of granite stones without a quarrying or mining lease. Reference to National Mineral Policy, 2008 has also been made. Petitioners prayed for the following reliefs in the Writ Petition:

(i) Issue a Writ of mandamus or any other writ order or direction directing respondents 2 to 5, 7 and 8 to stop the illegal quarrying activities of respondents 9 and 10 in government lands in Sy. Nos. 127/6, 127/7, 120, 272/3, 272/4, 263/1, 118, 127/8 and 119 in Block No.27 of Elamad Village, Kollam District and private lands in 127/5-2,

127/5-3, 126/2-2, 126/1-1, 126/3-3, 129/4, 265/1-3 109/3, 117/5-1, 117/5-2, 117/2, 261/1, 264/1, 264/2-1, 264/2-2, 264/5, 264/5-2, 264/6, 264/7, 265/1, 265/1-2, 119, 19/1 and 262/1 in Block 27 of Elamad Village, Kollam District forthwith and take action against 9th and 10th respondents for their illegal quarrying operations.

(ii) Issue a writ of mandamus or any other writ order or direction directing respondents 1 to 5 and 7 and 8 not to allow respondents 9 and 10 to conduct quarrying operations in government lands in Sy. Nos. 127/6, 127/7, 120, 272/3, 272/4, 263/1, 118, 127/8 and 119 in Block No.27 of Elamad Village, Kollam District and private lands in 127/5-2, 127/5-3, 126/2-2, 126/1-1, 126/3-3, 129/4, 265/1-3 109/3, 117/5-1, 117/5-2, 117/2, 261/1, 264/1, 264/2-1, 264/2-2, 264/5, 264/5-2, 264/6, 264/7, 265/1, 265/1-2, 119, 19/1 and 262/1 in Block 27 of Elamad Village, Kollam District except under valid quarrying lease and permit issued after approval of Mining Plan and Environmental Management Plan and after obtaining clearance from Ministry of Environment and Forests, as directed by the Honourable Supreme Court.

(iii) Direct respondents 9 and 10 to stop illegal quarrying operations in Government land in Sy. Nos. 127/6, 127/7, 120, 272/3, 272/4, 263/1, 118, 127/8 and 119 in Block No.27 of Elamad Village, Kollam District and private lands in 127/5-2, 127/5-3, 126/2-2, 126/1-1, 126/3-3, 129/4, 265/1-3 109/3, 117/5-1, 117/5-2, 117/2, 261/1, 264/1, 264/2-1, 264/2-2, 264/5, 264/5-2, 264/6, 264/7, 265/1, 265/1-2, 119, 19/1 and 262/1 in Block 27 of Elamad Village, Kollam District forthwith.”

10. In the counter affidavit filed by respondents 9 and 10 they claimed that they have been issued mining permit on 15.05.2014 under consolidated royalty payment system for extraction of building granite stones for a period of one year from the date of issue. Panchayat licence has also been claimed. It is averred that all five quarries covered by Exts.R9(d) to R9(h) are situate separate and distinct. It has been further averred that respondents 9 and 10 have already submitted application for required clearance from Ministry of Environment and Forests as well as State Environmental Impact Assessment Authority and they expect to receive environmental clearance within a short time.

11. Counter affidavit has also been filed by Grama Panchayat where it has been averred that quarrying operation is being conducted by respondents 9 and 10 in accordance with the licence issued by the Panchayat. Copy of the Government Order dated 21.02.2014 has also been brought on record where certain directions were issued by the State Government regarding rock quarrying, river mining and quarrying of ordinary earth. Reply was filed by the petitioners.

12. Counter affidavit has been filed by the 5th respondent, Senior Geologist, Department of Mining and Geology. In paragraph 3 of the counter affidavit details of the quarrying permits issued to respondents 8 and 9 have been mentioned. Validity period of the said permit has been mentioned as 01.05.2015 (for one permit) and

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12.05.2015 (for other permits). Reference to Government Order dated 21.02.2014 has also been mentioned. An adoption memo has been filed by the learned Senior Government Pleader to adopt the counter affidavit filed by the State in W.P.(C) No.6338 of 2014. In the counter affidavit filed in W.P(C) No.6338 the State has averred that it has framed the 2015 Rules in which directions issued by the Apex Court in *Deepak Kumar's* case (supra) have been complied with. Learned Single Judge while hearing the Writ Petition noted the contentions raised by the learned counsel for the parties and has noted the various directions issued by the Apex Court in *Deepak Kumar's* case (supra) as well as Government orders dated 10.01.2014 and 22.02.2014. The learned Single Judge after noticing the contentions of the parties by order dated 12.03.2014 referred the matter to Division Bench. The issue on which the learned Single Judge sought authoritative pronouncement has been stated in paragraph 13 of the reference order. It is useful to quote paragraph 13 of the reference order:

“13. In such circumstances, I am of the opinion that an authoritative pronouncement on the question whether even in the case of existing quarrying/mining permits environmental clearance from the competent authority, namely the Ministry of Environment and Forests, in respect of lands having an extent of more than 5 hectares and from the State Environmental Impact Assessment Authority in the case of lands having an area of less than 5 hectares should be obtained before exploiting the quarrying permit is called for. Incidentally the question whether the Government order dated 10.1.2014 can be relied on by the petitioner in view of the interim order passed by the National Green Tribunal also arises for consideration. The impact of the amendment to Section 14 of the Mines and Minerals (Development and Regulation) Act, 1957 by Act 37 of 1986 with effect from 10.2.1987 also arises for consideration. By virtue of the said amendment, section 14 of the Act applies to quarrying leases and mining leases and other mineral concessions granted in respect of minor minerals. Therefore, for that reason also I am of the opinion that an authoritative pronouncement on the issue is called for.”

13. Other Writ Petitions in this group also raised grievance against illegal quarrying by private respondents and prayed for stopping the quarrying operations which are being conducted without obtaining environmental clearance from SEIAA.

14. Third group of Writ Petitions are the Writ Petitions filed by quarry/lease/mining permit owners praying for various reliefs. This group consists of W.P.(C). Nos.7632, 12706, 7109, 15442, 4783 and 10738 of 2014. In W.P.(C).No.4783 of 2014, reference order dated 12.03.2014 of the learned Single Judge as noted above has also been passed, referring the matter to be heard by a Division Bench. Following the reference order dated 12.03.2014, various subsequent reference orders have been passed in other Writ Petitions of this group also. It is sufficient to refer to the pleadings in W.P.(C).No.12706 of 2014, in which reference order dated 26.05.2014 has been passed for comprehending various issues raised in the Writ Petitions of this group.

15. W.P.(C).No.12706 of 2014 has been filed by the petitioners, who claim to be in possession of 30 cents of dry land in Sy.No.50/11. The petitioners submitted an application to issue no objection certificate for removing ordinary earth and the District Collector issued no objection certificate dated 28.11.2012. By Exhibit P3, permit dated 07.12.2013 has been issued by the Geologist allowing removal of ordinary earth from the property of the first petitioner. The Village Officer had issued a stop memo, Exhibit P5 dated 27.02.2014, which was challenged by the petitioner in W.P.(C).No.6290 of 2014, wherein this Court stayed the stop memo. The petitioner's case is that no orders have been issued for issuing new permit or revalidating the time limit in the permit. The petitioner has referred to Exhibit P9 Government order dated 21.02.2014, by which the State Government issued various directions with regard to rock quarrying, river sand mining and mining/excavation of brick earth and ordinary earth. The petitioner also referred to the Government order dated 23.11.2012, Exhibit P12, by which the State Government directed that short term permits can be granted for extraction of minor minerals from private holdings, for a period not exceeding one year, if the applicant concerned had complied with all the other conditions for issuing of such permit as well as the conditions regarding environmental clearance stipulated in the Supreme Court order. On 11.12.2012, another order was issued by the State of Kerala, wherein it was clarified that short term temporary permits can be granted for those persons, who are eligible if all other legal requirements for doing mining operations are complied with. Reference to order dated 10.01.2014 of the State Government has also been made, wherein the State Government observed that after considering the situation of acute shortage of raw materials in the construction field of the State due to standstill of operations in the sector, operation of the short term permits is extended for a period of one year without insisting on the environmental clearance. The petitioner has prayed for quashing Exhibit P9 Government order dated 21.02.2014. The petitioner has also prayed for a declaration that the petitioner has right to get the 'P' form revalidated or a new 'P' form in pursuance of the Government orders dated 10.01.2014 and 11.12.2012.

16. W.P.(C).No.7632 of 2014 has been filed by the petitioner, who was granted mining lease dated 10.03.2010 for a period of 12 years for mining building stones. Various Departments of the State raised objection regarding grant of lease and hence pointed out that no objection from various Departments has not been obtained. It was further pointed out that the Forest Department raised objection that the distance between Shenthurni Wild Life Protection Centre and the proposed area to mine building stones by the petitioner is only 2.5 kilometers. The Forest Department prayed for cancellation of lease of the petitioner and the State Government by Exhibit P6 order dated 10.06.2013 cancelled the lease. The State Government while cancelling

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the lease also relied on the judgment of the Apex Court in *Deepak Kumar's case* (supra). The State Government held that mining projects with less area than five hectares would be treated as category 'B' project as defined in the environmental impact assessment notification dated 14.09.2006 and is to be considered by respective State Level Environmental Impact Assessment Authority. It held that allowing mining operation without the environmental clearance from the State Level Environmental Impact Assessment Authority is violation of the order of the Supreme Court. On the said ground, the lease was cancelled. W.P.(C). No.16940 of 2013 was filed by the petitioner in which the High Court vide judgment dated 25.07.2013 set aside the order of the State Government, Exhibit P6, on the ground that it was passed in violation of the principles of natural justice and the State Government was directed to pass a fresh order. The State Government again by Exhibit P9 order dated 19.02.2014 held that quarrying lease will stand cancelled. It is useful to note the following observation of the State Government while cancelling the lease:

“In view of these facts, Forest Department reported that they are not in favour of allowing quarrying activities in that area as the same is detrimental to the forest and wildlife. Government have also considered the fact that the averred land in this case is in Aryankavu Village, which is one of the 123 Villages notified as EFA in the Kasthurirangan Report.

Government have examined the matter in detail on the basis of the aforesaid facts and are pleased to order that the quarrying lease in the area will stand cancelled and no quarrying operations will be permitted in the area. The order of the Hon'ble High Court read as 10th paper above is complied with, accordingly.”

The petitioner has filed the Writ Petition praying for quashing the order, Exhibit P9. The Special Government Pleader has filed adoption memo to adopt the counter affidavit filed in W.P.(C).No.6338 of 2014.

17. W.P.(C).No.4783 of 2014 has been filed by the petitioner seeking a mandamus to third respondent to issue quarrying permit to remove the ordinary soil from his property. The petitioner claims that no objection certificate dated 06.05.2013 has been issued by the District Collector and the Geologist has also given consent, but quarrying permit has not been issued. Reference order dated 12.03.2014 was made by the learned Single Judge in the Writ Petition.

18. W.P.(C).No.12706 of 2014 has been filed by the petitioners for quashing Exhibit P9 Government order dated 21.02.2014 and seeking a declaration that the petitioners have right to get 'P' form revalidated issued on 07.12.2013. The petitioners' case is that the Geologist granted permission to remove ordinary earth by order dated 07.12.2013. The petitioners' further case is that the Government order dated 21.02.2014 is not applicable. It is pleaded that environmental clearance is necessary only for mining lease and not for short term permit. In the above Writ

Petition reference order dated 26.05.2014 has also been made by the learned Single Judge for hearing the matter by a Division Bench.

19. W.P.(C).No.7109 of 2014 has been filed by the petitioner seeking a mandamus directing the respondents not to interfere in the business of the petitioner in mining sand with the help of mechanised devices.

20. W.P.(C) No.15442 of 2014 has been filed for quashing Exhibit P12 order of the District Collector by which order the District Collector informed the petitioner that obtaining environmental clearance is obligatory. The petitioner was granted quarrying permit dated 07.05.2014 to remove granite building stone. Stop memo was issued to the petitioner, against which the petitioner filed a Writ Petition and this Court directed the District Collector to consider the petitioner's application after obtaining environmental clearance from SEIAA. A counter affidavit has been filed by the District Collector stating that quarrying shall affect the wild life and human population.

21. W.P.(C).No.10738 of 2014 has been filed to quash the time limit in Exhibits P2 and P3 and to quash Exhibit P8 refusing extension of time. The petitioner was granted mining permit on 28.03.2014 for a period upto 10.04.2014 to extract ordinary earth. The petitioner submitted representation to extend the period mentioned in Exhibits P2 and P3. The District Collector passed order on 04.04.2014 that quarrying permit cannot be granted, since environmental clearance is required. A counter affidavit has been filed by the Geologist, wherein it has been stated that as per Government Order dated 21.02.2014 environmental clearance is obligatory for granting quarrying permit.

22. The fourth group of Writ Petitions consist of Writ Petitions, which have been filed by the quarry owners/mining permit holders/mining lease holders seeking police protection. In all the Writ Petitions, the petitioners have claimed that they are carrying on quarrying operations under the mining permit/mining lease granted by the State and the private respondents are causing hindrance and obstruction in running their quarry. Consequently, police protection be allowed to them to carry on their mining operation. For deciding this group of Writ Petitions, it shall be sufficient to note the facts in W.P.(C).No.26453 of 2014.

23. The petitioner in W.P.(C).No.26453 of 2014 claims to have been granted quarry permit on 30.10.2013 in 6 acres and 20 cents of land. The petitioner was granted quarrying permit to extract laterite building stone. The petitioner's case is that when the petitioner started quarrying activities, respondents 4 to 10 began to create obstruction. They stopped the lorries carrying the mining stones and demanded payment of ` 500/- per lorry. The petitioner also filed a suit, O.S.No.843 of 2011, in

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which permanent prohibitory injunction was granted. The Special Government Pleader has filed adoption memo to adopt the counter affidavit filed in W.P(C).No.6338 of 2014. In the Writ Petition the learned Single Judge has made a reference dated 12.03.2014 as noted above.

24. Group-V Writ Petitions consist of three miscellaneous matters, being W.P.(C) Nos.4662 of 2014, 2636 of 2015 and W.A. No.1566 of 2014. In W.P.(C) No.4662 of 2014 the petitioners have prayed for writ of certiorari quashing Exhibit P8 order dated 26.06.2013 of the District Collector rejecting the application of the petitioner for no objection certificate to manufacture bricks. The petitioner claims to be owner of 1.52 cents of garden land and carrying on business of manufacture of bricks. The Tahsildar directed stoppage of the unit. The petitioner made an application for no objection certificate, which was rejected. The District Collector filed a counter affidavit. The Special Government Pleader has filed adoption memo to adopt the counter affidavit filed in W.P.(C).No.6338 of 2014.

25. W.P.(C).No.2636 of 2014 has been filed by the petitioners seeking mandamus directing the second respondent to consider and dispose of Exhibits P7, P8 and P9, i.e., objections/suggestions about the draft notification of Kerala Minor Mineral Concession Rules after giving an opportunity to the petitioners. The petitioner has prayed for a writ of prohibition prohibiting the respondents from publishing the final notification in pursuance of the draft Rule, Exhibit P5 before considering the objection.

26. W.A.No.1566 of 2014 has been filed by the appellant against the judgment dated 23.01.2014 passed in W.P(C).No.11478 of 2013. The Writ Petition was filed by the petitioner challenging the decision of the Panchayat dated 07.03.2014, Exhibit P18 rejecting the petitioner's application for issuance of licence to conduct the quarry. The learned Single Judge dismissed the Writ Petition. The Panchayat had filed a counter affidavit in the Writ Petition, where it referred to the decision dated 7.3.2013 of the Panchayat that granting quarry licence shall be disturbance to the public and shall cause danger to the residents and people.

27. In some of the Writ Petitions application for impleadment has been filed by various quarrying/lease/mining permit holders as well as associations. Some of the applicants were allowed to be impleaded, whereas others have been permitted to intervene in the matter. We have also heard the learned counsel appearing for the additional respondents in different Writ Petitions as well as the intervenors.

28. We have heard Sri.P.B.Sahashranaman, Sri.P.Chandrasekhar, Sri.Bechu Kurian Thomas, Sri.George Varghese Perumpallikuttyil, Sri.P.B.Krishnan, Sri.Paul K.Varghese, Sri.H.Badaruddin and Sri.Abraham Mathew Vettoor learned counsel

appearing for the petitioners in different Writ Petitions. We have also heard Sri.George Poonthottom, Shri P.K.Suresh Kumar, Senior Counsel Sri.Babu Joseph Kuruvathazha, Sri.Joby Jose Kondody, Sri.Jacob P.Alex and Sri.Mathew Kuzhalanadan and Sri.P.Viswanathan, learned counsel appearing for the respondents and also learned counsel for the intervenors.

29. Shri P.B.Sahashranaman, learned counsel appearing for the petitioner in the leading Writ Petition (public interest litigation), W.P.(C).No.31148 of 2014, contended that existing mining operations being conducted in the State of Kerala have caused a serious threat to the ecology and environment in the State. He submitted that the Apex Court, finding that excessive minings are done by showing small extent of land, which cause severe damage to the environment, has issued several directions in *Deepak Kumar's* case (supra). The Apex Court directed in the said judgment that no mining lease or renewal be granted without obtaining environmental clearance. It is submitted that in view of the amendments made in Section 14 of 1957 Act by 1986 Amendment, mining operations can be carried out only by mining lease. Section 4 of the 1957 Act contemplates mining by lease only and permits are contemplated for reconnaissance operations. The 1967 Rules contain provisions for issuance of permit for mining, which practice is now continued even after amendment of the 1957 Act. All permits issued under the 1957 Act are contrary to Section 4 of the 1957 Act. The issuance of permit or licence for mining operations are prohibited by law. The directions issued by the Supreme Court in *Deepak Kumar's* case (supra) are being subverted in granting permits for mining operations by the State of Kerala. The Government orders dated 23.11.2012 and 11.12.2012 issued by the State of Kerala are in violation of the judgment of the Apex Court in *Deepak Kumar's* case (supra). The Government of India, Ministry of Environment and Forest has issued order dated 18.05.2012, Exhibit P1 invoking power under Section 5 of the 1986 Act, which directions require environmental clearance for mining operations even for an area less than 5 hectares. The State Government is bound to follow the notifications made in the 1986 Act and the orders issued by the Government India. The Government Orders issued by the State from time to time are violating the rights guaranteed under Articles 21, 48 and 51A of the Constitution of India. It is the duty of the State to protect the environment from excessive mining, which will destroy the natural resources. The submission further is that the judgment of the Apex Court in *Deepak Kumar's* case (supra) prohibited all kinds of mining operations after issuance of the judgment without issuing environmental clearance and the said judgment is fully applicable to the mining lease granted even prior to the judgment of the Apex Court regarding the area less than 5 hectares. Other learned counsel appearing for the petitioners in the Writ Petitions challenging the quarrying operations by lease holders/permit holders have also raised similar submissions.

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30. Shri P.B.Krishnan, learned counsel appearing for the petitioner in the public interest litigation, W.P.(C). No.4471 of 2015 has contended that the 2015 Rules dated 07.02.2015 are not in accordance with the directions issued by the Supreme Court in *Deepak Kumar's case* (supra). He submits that the prescription as contained in Rule 33 when read along with Rule 66 is that quarry lease holders may take environmental clearance only on the expiry of the existing lease period is defeating the very objectives sought to be achieved through the orders issued by the Government of India, Ministry of Environment and Forests. It is submitted that under Rule 68, mining operations are to be undertaken only in accordance with the mining plan, hence the mining plan is a condition precedent for carrying out any mining operation. He submitted that the period of two years granted for submission of the mining plan by the existing lease holders/permit holders is violative of the provisions of the 1986 Act and the direction of the Apex Court in *Deepak Kumar's case* (supra). The learned counsel submitted that although he does not press for striking down the 2015 Rules, but Rule 68 has to be given overriding effect on other provisions of the Rule and it may be declared that no quarrying/mining operations be undertaken without there being duly approved mining plan. He submitted that interpretation of Rule 68 in the above manner shall protect the environment and ecology.

31. Learned counsel for the lease holders/permit holders refuted the above submission. It is submitted that the judgment of the Apex Court in *Deepak Kumar's case* (supra) cannot be made applicable with regard to the existing leases/permits. It is submitted that the directions in the above judgment are only with regard to mining leases to be granted/renewed after the judgment. It is further submitted that the Apex Court in the said judgment directed the State Government to frame requisite Rules as per the directions and the Rules having been framed, namely, 2015 Rules, the direction has come to an end and further steps regarding grant of mining lease/mining permit are to be undertaken in accordance with the 2015 Rules. It is submitted that Section 15, apart from mining lease, contemplates other "mineral concessions". Mineral concessions include mining permits also. Hence, the State Government was fully entitled to grant mining permits in accordance with the 1957 Act and no exception can be taken to the right of the State to grant mining permit in accordance with the 1957 Act. It is further submitted that the judgment of the Apex Court in *Deepak Kumar's case* (supra) was only with regard to mining leases and the Apex Court did not intend that environmental clearance be obtained with regard to short term permits, which are issued only for short period. It is submitted that mining operations by leases/permits be permitted to continue as per the 2015 Rules.

32. Shri Bechu Kurian, learned counsel for the petitioners/quarry owners submitted that the notification dated 14.09.2006 is applicable only with regard to new

activities. It is submitted that the notification dated 14.09.2006 was not applicable to existing leases/permits and the existing mining activities. It is submitted that since the notification dated 14.09.2006 envisages obtaining prior environmental clearance, which clearly means that environmental clearance is to be obtained before starting mining operations. Thus, the notification was applicable only with regard to new activities, which were to come after the issuance of the notification.

33. The learned Advocate General Sri.K.P.Dandapani and the Senior learned Government Pleader Sri.C.S.Manilal, appearing for the State, placing reliance on the 2015 Rules, submit that the 2015 Rules comply the conditions contained in *Deepak Kumar's case* (supra) regarding different aspects. They refers to the counter affidavit filed in W.P(C).No.6338 of 2014, which has been filed in the leading Writ Petition also, wherein it is pleaded that various directions regarding the size of the mining lease area, minimum period of mining lease, requirement of mining plan, formation of corpus fund for requirement and rehabilitation of mined areas, depth of mining and other conditions have been fully complied with. He submitted that under the 2015 Rules, now the State has provided for mining lease/quarrying permit. It is submitted that both for quarrying permit and mining lease the requirement of obtaining environmental clearance as per notification dated 14.09.2006 has been provided for, which fully complies with the requirement of law. For renewal of quarrying lease environmental clearance is also insisted in the Rules. It is submitted that the 2015 Rules fully comply with the directions of the Apex Court and Rules are comprehensive including of environmental aspects. He submitted that in view of framing of 2015 Rules, the direction of the Apex Court in *Deepak Kumar's case* (supra) has come to an end, since all directions are only for the interregnum period till the Rules are framed by the State. He further submitted that in view of the 2015 Rules, the questions, which have been referred by the learned Single Judge vide order dated 12.03.2014 have become academic only. It is not necessary to consider those issues for the purpose of these Writ Petitions.

34. Shri P. Raveendran, learned Senior Counsel appearing for the Association contended that since the notification dated 14.09.2006, environmental clearance is contemplated for area more than 5 hectares, the leases or mining permits for an area less than 5 hectares are statutorily excluded and the notification is not applicable with regard to an area less than 5 hectares. The notification dated 14.09.2006 can be modified only by a similar notification and no notification having been issued by the Central Government under the 1986 Act modifying or amending the notification dated 14.09.2006, including an area less than 5 hectares, there is no statutory requirement of obtaining environmental clearance for the area less than 5 hectares.

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35. Shri George Poonthottam, learned counsel for the permit holders/intervenors submitted that the prescription in the proviso to Rule 12 of the 2015 Rules that environmental clearance required under Rule 9 shall not be insisted in the case of renewal of quarrying permits in respect of quarrying which had a valid permit as on 09.01.2015 causes prejudice to those permit holders, whose permits had come to an end prior to 2015. He submitted that mining permits are fully permissible by virtue of Section 15 of the 1957 Act. He also submitted that permits are given for a small area and only for a period of one year, for which no environmental clearance is contemplated under notification dated 14.09.2006 or in the judgment of the Apex Court in *Deepak Kumar's* case (supra). Persons having less than 5 hectares area are disabled to make any application for environmental clearance.

36. Shri P.K.Suresh Kumar, learned counsel appearing for the existing lease holders submitted that the notification dated 14.09.2006 applies only to existing projects/activities for modernization and expansion and has no application on existing leases/permits. He submitted that all laws are to be presumed to be prospective unless there is something to indicate to the contrary.

37. Shri Bhagavat Singh, learned counsel appearing for respondents 9 and 10 in W.P.(C).No.6338 of 2014 submitted that the State Level Environmental Impact Assessment Authority has been absolved in the State with effect from 02.11.2014 and till date no authority has been created by the Central Government. He referred to various paragraphs of the notification dated 14.09.2006 and submitted that the said notification is not applicable to the existing permits and mining leases.

38. Learned counsel for the parties have also referred to various orders passed by the National Green Tribunal and various judgments of the Apex Court as well as this Court, which shall be referred to while considering the submissions in detail.

39. We have considered the submissions of learned counsel for the parties and perused the records.

40. From the submissions made by learned counsel for the parties and pleadings on record, following are the issues which arise for consideration in this bunch of cases:

Issues referred by learned Single Judge by reference order dated 12.03.2014:

I. Whether even in the case of existing quarrying/mining permits environmental clearance from the competent authority, viz., the Ministry of Environment and Forests in respect of lands having an extent of more than five hectares and from the State Environmental Impact Assessment Authority in respect of lands having an extent of less than five hectares be obtained before exploiting the quarrying permit?

II. Whether the Government order dated 10.01.2014 can be relied on by the petitioners, in view of the interim order passed by the National Green Tribunal dated 27.09.2013?

III. What is the impact of the amendment to Section 14 of the Mines and Minerals (Development and Regulation) Act, 1957 by Act 37/1986 with effect from 10.02.1987, by which amendment Section 4 of the Act has been made applicable to minor minerals? (Other issues)

IV. Whether the judgment of the Apex Court in *Deepak Kumar's case* (supra) contemplated environmental clearance for an area of less than five hectares with regard to the existing mining leases and mining permits on the date of the judgment or the judgment mandated obtaining of environmental clearance before grant of fresh mining lease/mining permit/renewal of lease?

V. Whether environmental clearance as contemplated by Notification dated 14.09.2006 issued under the Environmental Protection Act, 1986 requires environmental clearance for new projects/new activities or shall also govern the existing projects/activities?

VI. Whether environmental clearance as per Notification dated 14.09.2006 and the order dated 18.05.2012 issued by the Government of India, Ministry of Environment and Forest, is required for grant of short term mining permit also?

VII. Whether the interim directions issued by the Apex Court in *Deepak Kumar's case* (supra) dated 27.02.2012 were limited to the event of framing of appropriate Rules by the State Government under Section 15 of the 1957 Act?

VIII. Whether as per Rule 68 of 2015 Rules no quarrying operations can be carried out without there being an approved mining plan and Rule 68 did not contemplate any exception and has to be interpreted to the effect that after enforcement of the Rule with effect from 07.02.2015 all quarrying operations have to be done under approved mining plan?

IX. To what reliefs the petitioners of different groups in this bunch of Writ Petitions are entitled?

41. Issue Nos.I and IV to VI being interconnected are taken together:

Before we enter into the rival submissions of the parties it is useful to refer to the relevant statutory provisions. The Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957 to provide for the development and Regulations of mines under the control of the Union. Section 3 is the definition clause. Section 3(e) defines minor minerals. Section 4 of the Act provides for prospecting or mining operations to be under licence or lease. Section 4(1) is quoted as below:

“4. Prospecting or mining operations to be under licence or lease.-- (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

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Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Section 4A was inserted in the 1957 Act providing for termination of prospecting licences or mining leases where the Central Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment it is necessary for premature termination of a prospecting licence or mining lease. Section 14 of the 1957 Act prior to 10.02.1987 provided that provisions of Sections 4 to 13 shall not apply to minor minerals which Section was amended by Act 37 of 1986 with effect from 10.02.1987. Amended Section 14 is as follows:

“14. Sections 5 to 13 not to apply to minor minerals. — The provisions of Sections 5 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.”

Section 15 of the 1957 Act empowered the State Government to frame Rules in respect of minor minerals. Section 15(1) provided that the State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Section 15(1) was amended by Act 56 of 1972. Section 15(1) as amended provided as follows:

“15. Power of State Governments to make rules in respect of minor minerals. -
 - (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.”

Section 15(1A) was inserted by Act 37 of 1986. Relevant provisions for the purpose of this case are quoted below:

“(1A). In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor.

(d) the terms on which and the conditions subject to which quarry leases, mining leases or other mineral concessions may be granted or renewed.

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions.”

The State of Kerala in exercise of the powers under Section 15 of the 1957 Act framed the Kerala Minor Mineral Concession Rules, 1967. Rules were framed for regulating extraction of minor minerals in the State of Kerala.

42. Although by amendment made in 1972 by insertion of Section 4A, the Central Government took power to take action for termination of mining lease for preservation of natural environment but the said provisions were not sufficient to keeping check on mining operations and consequent adverse impact on environment and ecology. The Central Government noticed that there has been substantive decline in environment quality due to increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals etc. India was signatory to the United Nations Conference in the Human Environment held in Stockholm in June, 1972 where decisions were taken based on the world community's resolve to protect and enhance the environmental quality. The Parliament enacted the Environment (Protection) Act, 1986 to provide for protection and improvement of environment and matters connected therewith. Section 3 of the 1986 Act empowered the Central Government to take measures to protect and improve environment. Section 3(1) is quoted as below:

“3. Power of Central Government to take measures to protect and improve environment.-- (1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.”

Section 5 empowered the Central Government to give directions. Section 5 of the 1986 Act is quoted as below:

“5. Power to give directions.-- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.”

In exercise of the powers under Sections 6 and 25 of the 1986 Act, Environment (Protection) Rules, 1986 have been framed by the Central Government. Rule 5 provided for prohibition and restriction on the location of industries and the carrying on processes and operations in different areas. In exercise of the power under clause (a) of Rule 5(3), Notification was issued by the Central Government inviting objections from the public with the intention to impose prohibitions and restrictions on the expansion and modernization of any activity or new projects. After considering the objections in exercise of the power under Section 3(1) and (2) of the 1986 Act as well as Rule 5(3) of the 1986 Rules, the Central Government issued Notification dated 27.01.1994 prohibiting expansion or modernization of any activity or new project listed in the Schedule unless it has been accorded environmental clearance by the Central Government. Schedule I of the Notification mentioned list of project requiring environmental clearance from the Central Government. Item No.20 is Mining Projects which was to the following effect:

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“20. Mining projects (major minerals) with leases more than 5 hectares”.

43. Another Notification dated 14.09.2006 was issued by the Central Government in exercise of the power under Rule 5(3) the 1986 Rules in supersession of Notification dated 27.01.1994 where restriction was imposed on construction of new projects or activities or the expansion or modernization of existing projects or activities which were to be undertaken only after prior environmental clearance from the Central Government or State Government as the case may be by the State Level Environment Impact Assessment Authority. Paragraph 2 of the Notification required for prior environmental clearance. Schedule to the Notification included at Item No.1(a) “mining of minerals”. Properties were categorized into A and B and mining of minerals of an area of less than 50 hectares and more than 5 hectares were included in category B.

44. Then came the judgment of the Apex Court in *Deepak Kumar and Others v. State of Haryana & Ors.* (2012 (1) KLT Suppl. 60 (SC) = (2012) 4 SCC 629) where the Apex Court considering the Notification dated 14.09.2006 and considering Articles 21, 48A and 51A(g) of the Constitution of India and other relevant law issued directions that “leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the Ministry of Environment and Forests”. Various issues arose in different States regarding the effect of judgment of the Apex Court in *Deepak Kumar’s case* (supra) and the consequence of Notification dated 14.09.2006. Various issues arising in this bunch of Writ Petitions as noted above centres around the Notification dated 14.09.2006 and the directions issued by the Apex Court in *Deepak Kumar’s case* (supra) which shall be hereinafter noted in detail.

45. The first issue which is to be considered is as to whether Notification of dated 14.09.2006 contemplated obtaining environmental clearance even for existing projects and activities or it only confined to new projects or activities which were to be undertaken after the issuance of the Notification.

46. Answer to the issue is to be found out from the Notification itself. What was the legislative intent has to be reflected in the statutory scheme and the court is to find out the statutory intendment therefrom.

47. As noted above, Section 3(1) of the 1986 Act empowered the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and controlling the environmental pollution. Rule 5 of the 1986 Rules empowered the Central Government to prohibit and restrict location of industries and the carrying on process

and operations in different areas. Rule 5(3) and (4) which are relevant are quoted below:

“5(3)(a). Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on the processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, given notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations processes in that area about which such notification or restrictions on the location of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within five hundred and forty five days from such date of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule (3), wherever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3)”.

Statutory provisions thus fully empowered the Government to prohibit carrying on of any process or operation after issuance of notification. As noted above in exercise of the said power notification dated 27.01.1994 was issued which provided that mining projects (major minerals) more than 5 hectares requires environmental clearance from the Central Government. The said notification did not cover the mining of minor minerals. Then came the 2006 Notification by which mining of minor minerals has been taken within the Notification irrespective of whether the mineral is minor or major. It is useful to extract the following portion of the Notification containing directions of the Central Government:

“Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1987 and in supersession of the Notification S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment

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Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

Paragraph 2 of the Notification which is relevant is also quoted hereunder:

“2. Requirements of prior Environmental Clearance (EC):-- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category B in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization.
- (iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.

However, modernization or expansion proposals without any increase in pollution load, and without any additional water and/or land requirement are exempted from the provisions of this notification:

Provided that, a self certification, stating that the proposal shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent.”

Paragraph 7 of the Notification deals with Stages in the Prior Environmental Clearance (EC) Process for New Projects. It is useful to quote paragraph 7(i):

“7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:-- 7(i). The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:-

- | | |
|-----------|---|
| Stage (1) | Screening (Only for Category ‘B’ projects and activities) |
| Stage (2) | Scooping |
| Stage (3) | Public Consultation |
| Stage(4) | Appraisal”. |

The Schedule of Notification dated 14.09.2006 contains various headings. The first heading provided for mining, extraction of natural resources and power generation (for a specified production capacity). Item 1(a) which relates to mining of minerals relevant for the present case is quoted as below:

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“1(A). Mining of minerals	>50 ha of mining instead of non-coal mine	<50ha> 5ha of mining leases area in respect of non-coal mine lease”.
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Schedule of the Notification was amended from time to time. The Schedule as amended vide S.O. 2896(E) dated 13.12.2012 against column No.5 of item 1(a) to the following effect:

“General Conditions shall apply. Note: (i) Prior environmental clearance is required at the stage of renewal of mine lease for which application shall be made upto two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011 which requisite valid environmental clearance and which have fallen due for renewal or after the 4th November, 2011. (ii) Mineral prospecting is exempted.”

Relevant provisions of Notification dated 14.09.2006 as extracted above contained the following directions:

“...the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance.....”

Although the Notification used two words “construction of new projects or activities” before the word ‘projects’, the word ‘new’ is added but whether the word ‘activities’ was also be read in the conjunction with new is the issue to be answered. Clarification of the above issue is contained in paragraph 2 of the Notification which contains heading “Requirements of prior Environmental Clearance”. Paragraph 2 begins with the words “the following projects or activities shall require prior environmental clearance. The word ‘project’ or ‘activity’ is not suffixed with the word ‘new’. However, projects have been detailed in paragraph 2(i) to (iii). Paragraph 2(i) refers to ‘all new projects or activities listed in the Schedule to this notification and paragraph 2(ii) relates to “Expansion and modernization of existing projects or activities”. Thus paragraph 2(i) relates to all projects or activities and paragraph 2(ii) relates to expansion or modernization of existing projects or activities. Thus new projects or activities or existing projects or activities have been differently dealt with whereas for existing projects or activities environmental clearance is contemplated in the event of expansion and modernization whereas for new projects or activities environmental clearance is contemplated before carrying out mining operations.

48. There are no words in the Notification which may indicate that the Notification intend to stop all existing projects or activities.

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49. On the statutory interpretation, learned counsel for the parties cited various judgments on Interpretation of Statutes which are relevant to be referred to. In *M.K.Ranganathan & Anr. v. Government of Madras & Ors.*(AIR 1955 SC 604) the following was laid down in paragraph 21:

“21. It is a well-recognised rule of construction that “when two or more words which are susceptible of analogous meaning are coupled together *noscitur a sociis*. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general’ (Maxwell on Interpretation of Statutes-Edn.10.p.332). The Judicial Committee of the Privy Council also expressed itself in similar terms in - ‘*Angus Robertson v. George Day*’, (1879) 5 AC 63 at p 69 (E):

“It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them’. Having regard therefore to the context in which these words “any sale held without leave of the Court of any of the properties” have been used in juxtaposition with “any attachment, distress or execution put into force without leave of the Court against the estate or effects” it would be a legitimate construction to be put upon them that they refer only to sales held through the intervention of the Court and not to sales effected by the secured creditor outside the winding up and without the intervention of the Court.”

Here the two words “projects and activities” are used together with prefix ‘new’. The above statutory interpretation laid down by the Apex Court is fully attracted while interpreting the above notification. To the similar effect is the judgment of the Apex Court in *The State of Bombay and others v. The Hospital Mazdoor Sabha & Ors.* (AIR 1960 SC 610) wherein the following was laid down in paragraph 9:

“9. It is, however, contended that, in construing the definition, we must adopt the rule of construction *noscitur a sociis*. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in “Words and Phrases” (Vol. XIV, p. 207):

“Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *Ejusdem Generis*.” In fact the latter maxim “is only an illustration or specific application of the broader maxim *noscitur a sociis*”. The argument is that certain essential features or attributes are invariably associated with the words “business and trade” as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the

defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury, L. C., in *Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd.*, (1898 AC 631 at p. 634), in dealing with the wider words used in S. 6 of Valuation of Lands (Scotland) Act, 1854, “the words ‘free from all expenses whatever in connection with the said tramways’ appear to me to be so wide in their application that I should have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being *eiusdem generis* with the previous words enumerated”.

If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the Legislature in defining “industry” in S. 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of “industrial dispute” given by S.2(k), of “wages” by S.2(rr), “workman” by S.2(s), and of “employer” by S.2(g). Besides, the definition of public utility service prescribed by S. 2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by S. 2(m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by S. 2(j).”

Learned counsel appearing for the quarry owners further contended that the provisions of Notification dated 14.09.2006 cannot be held to have any retrospective operation. It is contended that all provisions have to be read as prospective unless there is any indication in the statute to give it retrospective operation. Paragraph 4 of the Judgment of the Apex Court in *Arjan Singh & Anr. v. State of Punjab & Ors.* (AIR 1970 SC 703) has been relied on which is quoted as below:

“4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, case should be taken not to extend its retrospective effect beyond what was intended.”

To the similar effect is the judgment of the Apex Court in *Zile Singh v. State of Haryana* ((2004) 8 SCC 1) and *Shanker Raju v. Union of India* (2011 (1) KLT SN 37 (C.No. 48) SC = (2011) 2 SCC 132) where the following has been laid down in paragraph 35:

“35. We may also add that where the Legislature clearly declares its intent in the scheme of a language of Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the Legislature if such meaning

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is clear on the face of the Statute. If the Statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court.”

A clarification issued by the Government of India on 02.07.2007 with regard to Notification dated 14.09.2006 throws considerable light over the intendment of the Notification. Federation of Mining Associations of Rajasthan and others have raised concerns regarding application of Notification dated 14.09.2006 to mining leases of 5 hectares for major minerals and mining leases of minor minerals which have been in operation before the Notification. The matter was examined by the Government of India, Ministry of Environment & Forests (IA Division) and Circular dated 2nd July, 2007 was issued which is relevant to quote:

“No.J-15012/35/2007-IA.II(M)-Part

Government of India

Ministry of Environment & Forests

(IA Division)

Paryavaran Bhavan

C.G.O. Complex,, Lodi Road,

New Delhi-110003

Telefax: 24362434

Dated the 2nd July, 2007

CIRCULAR

Sub: Clarification regarding applicability of EIA Notification, 2006 on mining leases of 5 hectare (major minerals) and mining leases of minor minerals which have been operating before 14.9.2006 - Regarding.

Federation of Mining Associations of Rajasthan and others have raised concerns regarding applicability of EIA Notification dated 14th September, 2006 to mining leases of 5 ha for major minerals and mining leases of minor minerals which have been in operation before the said Notification coming into force. The matter has been examined in the Ministry.

It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and or production, such projects would need to obtain prior environmental clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production.

(S.K. Aggarwal)

Director”

50. Government of India, Ministry of Environment and Forests clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal. As noted above, in the 1994 Notification mining of minor mineral was not included. Thus for mining activity regarding minor mineral no environmental clearance was required under the 1994 Notification. Hence by clarification existing minor leases were to continue till renewal of mining lease falls due. Thus for existing leases, the Central Government clarified that environmental clearance has to be obtained when renewal falls due. In view of the aforesaid discussion, we accept the argument of the learned counsel appearing for the quarry owners that Notification dated 14.09.2006 was not applicable with regard to lease of minor minerals which were in existence on the date of issuance of the Notification dated 14.09.2006.

51. In the above context, judgment of the Apex Court in *Deepak Kumar's* case (supra) has also to be referred to. As noted above, the EIA Notification only covered lease areas of 5 hectares or more. The Apex Court considered the action of the State of Haryana which issued auction notice on 03.06.2011 proposing to auction the extraction of minor minerals of an area not exceeding 4.5 hectares in different districts. The Apex Court noted the serious environmental impact of quarrying, mining and removal of sand from instream and upstream of several rivers. The Apex Court noted that it is without conducting any study on the possible environmental impact auction notices were issued. The following was laid down in paragraphs 10 and 11:

“10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying, mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on/in the river beds and else - where the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat

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characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan.”

The Apex Court noted that the Ministry of Environment and Forests came across several instances across the country regarding damage to lakes, riverbeds and groundwater leading to drying up of waterbeds and causing water scarcity on account of quarrying/ mining leases and mineral concessions granted by the State Governments. The Ministry of Environment and Forests, taking note of those aspects constituted a Core Group to look into the environmental aspects which Core Group submitted its recommendations to the Ministry of Environment and Forests, The recommendations given by the Core Group have been extracted by the Apex Court in paragraph 19 of the judgment conclusion of which is to the following effect:

19. For an easy reference, we may extract the issues and recommendations made by the MoEF, which are as follows:

“4.0 ISSUES AND RECOMMENDATIONS

.....

5.0 Conclusion:

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments “location of any eco - fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States.”

(emphasis supplied)

The Apex Court noted the recommendation that the State/Union Territories have to ensure that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved mining plan. The following was observed in paragraphs 21 and 24:

“21. Further, it was also recommended that States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining Plan should take note of the level

of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in 2010 rules. A proper framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco - fragile zone(s) within the impact zone of the proposed mining area, the linked Rules/Notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

24. We are of the view that all State Governments / Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under S.15 of the Mines and Minerals (Development and Regulation) Act, 1957.”

The Apex Court emphasised about an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resources. The Apex Court further noted that the State of Haryana and other States have not so far implemented the above recommendations of the Ministry of Environment and Forests and the Guidelines issued by the Ministry of Mines before issuing the auction notices. The Apex Court directed all States/Union Territories to give effect to the recommendations of the Ministry of Environment and Forests in its report of March, 2010. The following was laid down by the Apex Court in paragraphs 26 and 27:

“26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Art.48A, Art.51A(g) read with Art.21 of the Constitution.

27. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the

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model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.”

The Apex Court in the last paragraph of the judgment issued an interim order which is to the following effect:

“We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF.”

52. Much of the submissions were also raised before us that whether judgment of the Apex Court in *Deepak Kumar*'s case (supra) directed for obtaining environmental clearance for lease to be granted and renewal to be obtained for areas less than 5 hectares or the said direction also contemplated obtaining environmental clearance for ongoing leases.

53. After the judgment of the Apex Court dated 27.02.2012 in *Deepak Kumar*'s case (supra) Government of India, Ministry of Environment and Forests came up with office memorandum dated 18.05.2012. By direction dated 18.05.2012, the Government of India included mining areas of less than 5 hectares under the environment regime as contemplated by Notification dated 14.09.2006. Government of India directed that mining projects with lease area upto less than 50 hectares including projects of minor mineral with lease area less than 5 hectares would be treated as category B. It is useful to quote the entire order of the Government of India dated 18.05.2012:

“No.L-11011/47/2011-IA.II(M)

Government of India

Ministry of Environment & Forests

Paryavaran Bhavan
 C.G.O. Complex, Lodi Road,
 New Delhi-110003
 Telefax: 24362434

Dated the 18th May, 2012

OFFICE MEMORANDUM

Sub: Order of Hon'ble Supreme Court dated 27.2.2012 in I.A. No.12-13 of 2011 in SLP (C) No.19628-19629 of 2009 in the matter of *Deepak Kumar etc. v. State of Haryana and Ors.* - Implementation thereof - Regarding.

Reference is invited to the above mentioned order of the Hon'ble Supreme Court directing *inter alia* as under:

“We in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 ha be granted by the States/UTs only after getting environmental clearance from the MoEF.”

2. The Environment Impact Assessment (EIA) Notification, 2006, as amended, requires mining projects (new projects, expansion or modernization of existing projects as also at the stage of renewal of mine lease) with lease area of 5 ha and above, irrespective

of the mineral (major and minor) to obtain prior environment clearance under the provisions thereof. Mining projects with lease area of 5 ha and above and less than 50 ha are categorized as category 'B' whereas projects with lease area of 50 ha and above are categorized as category "A". The category 'A' projects are considered at the central level in the Ministry of Environment & Forests while category 'B' projects are considered by the respective State/UT Level Environment Impact Assessment Authority, notified by MoEF under the EIA Notification, 2006.

3. In order to ensure compliance of the above referred order of the Hon'ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 ha including projects of minor mineral with lease area less than 5 ha would be treated as category 'B' as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006.

4. Further, the Hon'ble Supreme Court in its order dated 16.4.2012 in the above mentioned matter and the linked applications has observed as under:

"All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the applications within ten days from the date of receipt of the applications in accordance with law."

Accordingly, the respective SEIAAs in dealing with the applications of the applicants referred to in the above mentioned order shall ensure that the directions of the Hon'ble Supreme Court are effectively complied with and the applications of such applicants are disposed of within the time limit prescribed by the Hon'ble Court in accordance with law.

This issues with the approval of the Competent Authority.

Sd/-

(Dr. S.K. Aggarwal)

Director"

54. The above direction of Government of India is clearly referred to its power under Section 5 of the 1986 Act providing for environmental clearance for lease area less than 5 hectares. Thus there remains no doubt that even for lease area less than 5 hectares, after the judgment of the Apex Court in *Deepak Kumar's* case (supra) environmental clearance is required for grant/renewal of mining lease.

55. Question as to whether mining lease for areas less than 5 hectares which were continuing on the date of the Apex Court Judgment in *Deepak Kumar's* case (supra) required environmental clearance has to be examined looking into the directions issued by the Apex Court as well as the order of the Government of India dated 18.05.2012.

56. Order of the Apex Court in *Deepak Kumar's* case (supra) is in the nature of an interim order which is clear by the words used "in the meanwhile". The order directed that leases of minor minerals including their renewal for an area of less than five hectares

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be granted by the State/Union Territories only after getting environmental clearance from MoEF. The order thus used the words “be granted” which clearly meant that it referred to the leases to be granted, after the Government of India’s order dated 18.05.2012. Paragraph 3 of the order used the word “henceforth” which clearly meant that the order was to be operated with regard to leases and renewals which were to be granted for an area less than 5 hectares after the issue of the order.

57. One more issue incidental to the above issues need to be considered. One of the submissions which has been raised before us is that both the Notification dated 14.09.2006 and the judgment of the Apex Court in *Deepak Kumar’s* case (supra) used the word ‘lease’, hence neither the Notification dated 14.09.2006 nor the judgment of the Apex Court in *Deepak Kumar’s* case (supra) was applicable with regard to mining permits/quarry permits which are granted under the 1967 Rules. As noted above, 1967 Rules have been framed in exercise of the powers under Section 15 of the 1957 Act. Section 15 of the 1957 Act uses the words “quarry leases, mining leases or other mineral concessions” which words were substituted by Act 56 of 1972 with effect from 12.09.1972. Section 15 is thus clear that the State Government is empowered to make Rules for regulating grant of leases or other mineral concessions. Mining permit is nothing but a mineral concession and included in the words “other mineral concessions”. The State was thus fully empowered to grant mining leases of minor minerals including mining permit. Mining operations has been defined in Section 3 (d) as any operations undertaken for the purpose of winning any mineral. Notification dated 14.09.2006 uses the words “mining of minerals”. Heading 1 provides “mining, extraction of natural resources....”. The Notification cannot be held confined only to mining operation by a mining lease. Mining operation is a wider term which shall include mining operation by any means, i.e., mining lease/quarrying lease/mining permit etc. We thus are of the view that Notification dated 14.09.2006 clearly covered mining operation by mining lease/mining permit/quarry permit. Government of India by order dated 18.05.2012 having made, obtaining prior environmental clearance mandatory for an area of less than 5 hectares the same shall apply to any kind of mining activity including a mining permit.

58. The Apex Court in *State of T.N. v. M/s. Hind Stone etc.* (AIR 1981 SC 711) has sounded a note of caution that rivers, forests, minerals and such other resources constitute a nation’s natural wealth. These resources are not to be frittered away and exhausted by any one generation. It was held that every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation. The following was laid down in paragraph 6:

6. Rivers, Forests, Minerals and such other resources constitute a nation’s natural wealth. These resources are not to be frittered away and exhausted by any one generation.

Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the Nation.....”

Justice M.N.Venkatachaliah, in *State of Bihar v. Murad Ali Khan & Ors.* (1988 (2) KLT SN 72 (C.No.108) SC = (1988) SCC 655) has stated that the ecological imbalances and consequent environmental damage have reached to such an alarming state that unless immediate, determined and effective steps are not taken the damage might become irreversible. It is useful to note the observations made in paragraphs 8 and 9 which are to the following effect:

“8. On a careful consideration of the matter, we are afraid, the approach of and the conclusion reached by the High Court is unsupportable. In regard to the first ground, presumably, certain provisions of the “Act” in regard to cognizability and investigation of offences against the Act, relevant to the matter, had not been placed before the High Court. The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the deprivations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last - ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that “Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee. “ In his foreword to ‘International Wild Life Law’, H. R. H. Prince Philip. The Duck of Edinburgh said:

“..... Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that.....”

“.....As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow.....”

(See International Wildlife Law by Simon Lyster, Cambridge - Crotuis Publications Limited, 1985 Edn.)

There have been a series of international conventions for the preservation and protection of the environment. The United Nations General Assembly adopted on 29.10.1982. “The world charter for nature.” The charter declares the Awareness that:

(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

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(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.”

To the similar effect is the judgment of the Apex Court in *Indian Council for Environmental Action v. Union of India & Ors.* ((1996) 5 SCC 281) where the following observations are made in paragraphs 41 and 42 which are quoted below:

“41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people’s fundamental rights but in regard to many technical matters, the Courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement - agencies to implement the law.

42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the Court dealing with such issues to know about the local conditions. Such conditions in different parts of the Country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti pollution laws where the allegations relate to the spreading of pollution or non compliance of other legal provisions leading to the infringement of the anti pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be affected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.”

The Apex Court in *T.N. Godavarman v. Union of India* ((2002) 10 SCC 606) had emphasised that it is the duty and constitutional obligation of the Government to protect the environment enshrined in Articles, 21, 48A and 51A(g) of the Constitution. Following was laid down in paragraphs 17 and 24:

“17. Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (Forty-second Amendment) Act, 1976, enjoins that “State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”. Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes “a fundamental duty” on every citizen of India to protect and improve the natural “environment” including forests, lakes, rivers and wildlife and to have compassion for living creatures. The word “environment” is of broad spectrum which brings within its ambit “hygienic atmosphere and ecological balance”. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the man-made environment and natural environment.

24. The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well-being of human beings. [See World Commission on Environment and Development — Our Common Future (1987).] To commemorate the tenth anniversary of the Stockholm Conference, the world community of States assembled in Nairobi (May 10-18, 1982) to review the action taken on to implement the Stockholm Declaration. It expressed serious concern about the state of environment worldwide and recognized the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it.

The above view was again reiterated by the Apex Court in *T.N. Godavarman v. Union of India* (2005 (4) KLT SN 87 (C.No.119) SC = (2006) 1 SCC 1) where the Apex Court noted the following in paragraphs 1 and 3:

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“1. Natural resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

3. Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In the ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long-lasting.

Such development would be counterproductive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use”.

59. Learned counsel for the quarry owners as well as the learned Government Pleader have made much emphasis on the fact that on account of requirement of environmental clearance development in the State has come to a standstill. It is submitted that even the Metro Rail is suffering from material crunch.

60. Development and protection of environment both have to be given due importance. The theory of sustainable development has been propounded to strike a balance between development and protection of environment. Protection of environment being constitutional obligation, the State cannot sacrifice the same in the name of development. The Apex Court in *M. C. Mehta v. Union of India and others* (2004 (3) KLT SN 69 (C.No.97) SC = AIR 2004 SC 4016) has said that in case of doubt of conflict between development and protection of environment, protection of environment has precedence over economic interest.

“48. The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by this Court in *T.N. Godavarman’s* case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used

as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a strait-jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there maybe irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.”

Much emphasis has been laid by the learned counsel for the quarry owners that short term permit are out of the regime of Notification dated 14.9.2006 and the Apex Court fully knew about other mineral concessions but in *Deepak Kumar's* case the Apex Court confined the direction only to mining lease. To accept the submission of the learned counsel for the quarry owners that the Notification dated 14.09.2006 is not attracted on the mining permit, permitting the environment to be adversely affected damage by continuous exploitation of natural resources under the mining permit which runs counter to the very object and purpose of issuance of Notification dated 14.09.2006. The concept of strict regulatory regime for minor mineral shall explode if one category of mineral concession, i.e., mining permits are permitted to excavate to deplete natural resources without there being any environmental regulatory measures. Notification dated 14.09.2006 never intended that mining concession by mining permit should be kept out of regulatory measure. Neither the said Notification can be interpreted in the above manner nor the same shall advance the object of protection of environment which is the spirit of the enactment and judgment of the Apex Court in *Deepak Kumar's* case (supra). Issue Nos.I and IV to VI are answered accordingly.

61. One more aspect need to be considered in this regard. Notification dated 14.09.2006 has suffered various amendments. One of the amendments made in the Schedule to the Notification dated 14.09.2006 is Notification dated 09.09.2013 by which with regard to item No.1(a) column 4. Amendment made for item No.1(a) is as follows:

“MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 9th September, 2013.

S.O.2731(E).-In exercise of the powers conferred by sub-section(l) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection)Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection Rules), 1986, the Central Government hereby makes the following further amendment to the notification of the Government of India, in the Ministry of Environment and Forests number S.O.1553(E) dated 14th September, 2006 after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the said rule 5 in public interest, namely: -

In the said notification, in the Schedule, for item 1 (a) and entries relating thereto, the following item and entries shall be substituted, namely:-

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1	2	3	4	5
“1(a)	<p>(1) Mining of minerals</p> <p>(ii) Slurry pipelines (coal lignite and other ores) passing through national parks or sanctuaries or coral reefs, ecologically sensitive areas.</p>	<p>≥50 ha of mining lease area in respect of non-coal mine lease.</p> <p>>150 ha of mining lease area in respect of coal mine lease.</p> <p>Asbestos mining irrespective of mining area.</p> <p>All projects.</p>	<p><50 ha of mining lease area in respect of minor minerals mine lease; and</p> <p>≤50 ha ≥5 ha of mining lease area in respect of other non-coal mine lease.</p> <p>≤150 ha >5 ha of mining lease area in respect of coal mine lease.</p>	<p>General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals:</p> <p>Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5 ha.</p> <p>Note:</p> <p>(i) Prior environmental clearance is required at the stage of renewal of mine lease for which an application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all (those mine leases, which were operating as on the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011:</p> <p>Provided that no fresh environmental clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification.</p> <p>(ii) Mineral prospecting is exempted”.</p>

62. In view of the Notification dated 09.09.2013, now all mining leases in respect of all minor minerals having an area of less than 50 hectares required environmental clearance. This obviously include the lease areas less than 5 hectares. However, in the context of the aforesaid Notification, learned counsel appearing for different quarry owners has relied on order of the National Green Tribunal dated 13.01.2015 in O.A. No.123 of 2014 and M.A. No.419 of 2014 in the matter of *Himmath Singh Shekhawat v. State of Rajasthan & Ors.* The National Green Tribunal in the said order has held and declared that Notification dated 14.09.2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the 1986 Rules. The following is the direction issued by the National Green Tribunal.

“For the reasons afore recorded, we hold and declare that the Notification dated 9th September, 2013 invalid and inoperative for non-compliance of the statutorily prescribed procedure under the Environment (Protection) Rules, 1986 and for absence of any reason for absence of any justifiable reason for dispensation of such procedure.”

Learned counsel appearing for the petitioners in the Public Interest Litigations contended that the National Green Tribunal has no jurisdiction to quash a notification issued under the 1986 Act. It is submitted that the order of the National Green Tribunal is inoperative and has no effect on continuance of the notification dated 09.09.2013. For the purpose of this case it is not necessary for us to enter into the issue as to whether direction of the National Green Tribunal in its order dated 13.01.2015 is inoperative or invalid, since we have already held that in view of the direction of the Government of India, Ministry of Environment and Forests dated 18.05.2012 read with the Judgment of the Apex Court in *Deepak Kumar's* case (supra) now it is mandatory to obtain environmental clearance of mining lease for an area less than 5 hectares.

63. Now we take Issue No.III which relates to impact of the amendment to Section 14 of the 1957 Act. Shri P.B. Sahasranaman, learned counsel appearing for the leading Writ Petition has contended that by amendment made Section 4 having been made applicable to minor mineral, no mining operations can be permitted except by mining lease and mining operations by mining permit/quarry leases are all against the provisions of Section 4. It is submitted that permits are contemplated only for reconnaissance. Section 4(1) contains an injunction that “no person shall undertake any reconnaissance, prospecting or mining operations in any area”. Thus the predominant object of Section 4 is to prohibit undertaking of any mining operation in any area except by a mining lease. When Section 4 has been made applicable to the minor minerals, Section 15 of the 1957 Act has also to be given due weight. Under Section 15, the State is empowered to make rules in respect of minor minerals, i.e., quarry leases, mining leases or other mineral concessions. Provisions of Sections 4, 14 and 15 have to be given harmonious construction to advance the object of the 1957 Act. Section 4 cannot be read in a manner

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that although there is prohibition in undertaking of mining operation by mining lease there is no prohibition of mining by mining permit. Any such interpretation shall be destructive of the very object of Section. We thus are of the view that the submission that after amendment to Section 14, no mining operations can be allowed by a mining permit and mining operation is to be done only except under a mining lease has to be rejected. Restriction under the Section thus has to be read as a prohibition of all mining operations whether under a mining lease or by any other kind of mineral concession. The issue is answered accordingly.

64. Now we come to Issue Nos.II & VII. One of the issues referred to by the learned Single Judge is whether Government Order dated 10.01.2014 can be relied on by the petitioners in view of the interim order passed by the National Green Tribunal dated 27.09.2013. Government Order dated 10.01.2014 has been quoted in the referring order which is to the following effect:

“GOVERNMENT OF KERALA

Abstract

Industries Department-Mining and Geology-Short term permits for extraction of Minor Minerals-pending Environment clearance-Extension of time granted-orders issued

.....

INDUSTRIES (A) DEPARTMENT

G.O.(Ms) No.5/2014/ID. Thiruvananthapuram, Dated, 10th January, 2014.

Read:- 1) G.O.(Ms).No.140/2012/ID dated 23.11.2012

2) G.O.(Ms). NO.144/2012/ID dated 11.12.2012

ORDER

Government as per the orders read above have ordered that short term permits can be granted for the existing quarries for extraction of minor minerals from private holdings of less than five hectares which are not on leases on Government lands for a period not exceeding one year, without insisting Environment Clearance from the Ministry of Forest and Environment, if the applicant concerned had complied with all other conditions for issuance of such permits specified under the Kerala Minor Mineral Concessions Rules 1967. This order was subject to further orders, if any that would be passed by the Supreme Court of India on the clarification petition proposed to be moved by the Government of Kerala in the Supreme Court on the order dated 27.2.2012 in SLP © No: 19628/2009. Government after having considered the situation of acute shortage of raw materials in the construction field of the State due to standstill of operations in the sector are pleased to extend the tenure of operation of the aforesaid orders with respect to grant of short term permits without insisting the Environment clearance for a further period of one year.

By order of the Governor,

P.H. Kurian

Principal Secretary to Government.

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By order dated 04.01.2014 the State Government has extended the Government Order dated 11.12.2012.

65. After the judgment of the Apex Court in *Deepak Kumar's* case (supra) and the Government of India Order dated 18.5.2012, by order dated 23.11.2012, the following has been directed.

“Government have examined all the aspects of the issue in detail and are pleased to order that, in the light of the legal opinion furnished by the Advocate General short term permits can be granted for the existing quarries for extraction of minor minerals from private holdings, for a period not exceeding one year, if the applicant concerned had complied with all other conditions for issuance of such permit, as well as the conditions regarding environmental clearance stipulated in the Supreme Court Order read as 1st paper above, wherever applicable.

By Order of the Governor,
K.S.SRINIVAS,
Special Secretary to Government”

66. Subsequent to Government Order dated 23.11.2012, another Government Order was issued on 11.12.2012 by the State Government by which certain directions are issued in response to letter dated 28.11.2012 sent by the Director of Mining and Geology. Government Order dated 11.12.2012 is as follows:

“GOVERNMENT OF KERALA

Abstract

Industries Department - Mining & Geology - Order dated 27.2.2012 of Honourable Supreme Court in I.A. Nos.12-13 of 2011 in SLP No. 19268-19629 of 2009 on the grant of Mineral Concessions to minor minerals - Issuance of permits for extraction of minor minerals in private holdings - Modified Orders issues.

INDUSTRIES (A) DEPARTMENT

G. O. (Ms) No. 144/2012/id dated, Thiruvananthapuram *11.12.2012.*

Read:- 1) G.O(Ms) 140/12/ID dated 23.11.2012.

2) Letter No.3889/M2/2012 dated 28.11.2012 of the Director of Mining and Geology, Thiruvananthapuram

ORDER

As per order read as 1st paper above, Government accorded permission to grant short term permits for existing quarries for extraction of minor minerals from private holdings, for a period not exceeding one year, if the applicant concerned complied with all other conditions for issuance of such permit, as well as other conditions regarding environmental clearance stipulated in the Supreme Court Order read as 1st paper above, wherever applicable.

2. But as per letter read as 2nd paper above Director of mining and Geology requests to clarify the following parts.

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(i) Whether short term quarrying permit for a period of less than one year can be granted without obtaining environmental clearance stipulated in the order of the Supreme Court dated 27.02.2012, if the application is satisfactory in all other respects.

(2) What are the conditions/circumstances that invite environmental clearance in the case of issuance of short term quarrying permit for minor minerals?

(3) The matter has been examined in consultation with the law Department. The legal opinion received is that short term temporary permits can be granted to those persons who are eligible if all other legal requirements for doing mining operations are complied with. It is therefore clarified that short term permits can be granted in respect of minor minerals in private holdings which are not on leases on Government lands subject to satisfaction of the various requirements specified under the Kerala Minor Mineral Concessions Rules, 1967.

4. This order will be subject to further orders, if any that would be passed by the Supreme Court of India on the clarification petition proposed to be moved by the Government of Kerala in the Supreme Court on the order dated 27/02/2012 in SLP (C) No. 19628/2009.

5. The G.O. read as 1st paper above, is revised to this extent.

By order of the Governor,
 Tom Jose,
 Special Secretary (in charge)”

Consequence of Government Order dated 11.12.2012 as extended by Government Order dated 10.01.2014 is that the Government is entitled to grant short term temporary permits to those who are eligible and all other legal requirements of mining operations are complied with. The Government Order further stated that short term permits can be granted in respect of minor minerals of private holdings which are not lease on Government holdings.

67. Now the order of the National Green Tribunal dated 27.09.2013 has been quoted in the referring order. The Tribunal vide its interim order issued the following directions:

“Accordingly, we restrain any person, Company and Authority to carry out any such digging activities of brick earth or ordinary earth against the directives issued by the MoEF dated 24.06.2013 in any part of the country without obtaining EC from the competent authority as per the Notification. The Chief Secretaries of all the States/UTs are to ensure strict adherence to this order. Dasti order allowed.”

68. Interim order of the Tribunal having been issued to all Chief Secretaries of the State who were directed to ensure strict adherence of the order. Unless the said order is varied or modified, the State was under an obligation to comply with the said direction.

69. Learned Advocate General has submitted that now since the State of Kerala has framed the 2015 Rules, the issue as to whether the State could have been issued short term permit without obtaining environmental clearance has lost its relevancy. It is submitted that the said issue has become academic only.

70. The judgment of the Apex Court in *Deepak Kumar's* case has already been noted above wherein in paragraph 29 interim order was passed. In paragraph 27 of the judgment the Apex Court has directed all the States/Union Territories to give effect to the recommendations made by the Ministry of Environment and Forests in its Report of March 2010 and the model guidelines framed by the Ministry of Mines within a period of six months from that day and submit their compliance reports. Whereas in paragraph 29 by the words "in the meanwhile" it clearly meant the situation till the State amends its Rules as per the directions issued in paragraph 27. In the present case the State has framed the 2015 Rules which supersedes Rules 1967. It is relevant to refer to some Rules of the 2015 Rules relating to environmental clearance. Rule 9 contemplates disposal of application for the grant of quarrying permit to be when the applicant submits approved mining plan and environmental clearance for the precise area. Rule 9(2) contemplates issue of quarrying permit only on receipt of mining plan and environmental clearance. Rule 9 is quoted below:

9. Disposal of application for the grant of quarrying permit - (1) On receipt of the application for grant of quarrying permit for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area:

Provided that, approved mining plan and environmental clearance shall not be insisted, for the issuance and renewal of permits in the case of Laterite Building Stone.

(2) On receipt of an approved mining plan and Environmental Clearance for the precise area and on production of all other statutory licenses/clearances/No Objection Certificate etc. from other statutory authorities concerned, the competent authority shall issue a quarrying permit to the applicant within thirty days in Form N for ordinary earth and in Form M for all other minor minerals."

Rules 12 relates to renewal of a quarrying permit which is to the following effect:

12. Renewal of a quarrying permit-- On receipt of an application in Form-A, a quarrying permit may be renewed for a further period of two years but not exceeding one year at a time after complying with the procedure provided for grant of quarrying permit under rule 9 and subject to the production of all other statutory licenses/ clearances/ No Objection Certificate, etc., from other statutory authorities concerned:

Provided that, the environmental clearance required under rule 9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January 2015:

Provided further that the approved mining plan required under Rule 9 shall not be insisted till 1st April 2016 for renewal of a quarrying permit."

Rule 20 which deals with grant of quarrying permit also makes the conditions as specified in Chapter II applicable to grant of quarrying permit in respect of lands which vests in

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the Government. Chapter V which deals with grant of quarrying leases in respect of lands in which the mineral or mineral right vests in the Government also contemplates issuance of quarrying lease only after receipt of mining plan and environmental clearance. Rule 33 (1) and (2) which are relevant are quoted below:

“33. Disposal of application for the grant or renewal of quarrying lease --

(1) On receipt of the application for grant or renewal of quarrying lease for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area,

(2) On receipt of an approved mining plan and Environmental Clearance for the precise area and on production of all other statutory licenses/clearances/No Objection Certificate etc. from other statutory authorities concerned, the competent authority shall grant a quarrying lease within thirty days.

From the 2015 Rules it is clear that now the State has specifically prescribed requirement of environmental clearance for grant of mining permit as well as mining lease/quarrying lease. Rule having coming into from 07.02.2015 all subsequent acts by the State has to be conducted in accordance with the statutory Rules. Order of the Apex Court in *Deepak Kumar's* case (supra) which was issued as an interim measure has served its main purpose since requirement of obtaining environmental clearance has been engrafted in the 2015 Rules.

71. One submission which has been pressed by the learned counsel for the intervenors is that proviso has been engrafted in Rule 12 to the effect that environmental clearance required under rule 9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January 2015. Whether the permit was valid as on 09.01.2015 is the question which has to be examined with regard to the facts of each case/each permit. We having held that after the judgment of the Apex Court in *Deepak Kumar's* case and the order of the Government of India, Ministry of Environment and Forests dated 18.05.2012 all mining operations required environmental clearance with regard to area less than 5 hectares for obtaining permit thereafter or renewal environmental clearance is required. We thus are of the view that the concept of valid permit as on 09.01.2015 under the proviso to Rule 12 has to be read accordingly. There being no challenge before us with regard to any of the 2015 Rules, it is not necessary for us to say anything more. Issue Nos.II and VII are answered accordingly.

72. Issue No.VIII relates to interpretation of Rule 68. Rule 68 forms part of Chapter VI which pertains to mining plan. We have noted that as per Rules 9 and 33 for grant of mining permit and grant of renewal of quarrying lease, submission of approved mining plan is mandatory. However, with regard to existing lease holders a separate provision

(Rule 66) is engrafted. Rule 66(1) grants one year time from the commencement of Rules for submission of mining plan where quarrying operations for minor minerals have been undertaken. As per Rule 66(2) the said period can be further extended for a period of one year. Rule 68 provides that quarrying operations to be in accordance with mining plan which is quoted below:

68. Quarrying operations to be in accordance with mining plan.-- (1) Every lessee shall carry out quarrying operations in accordance with the approved mining plan with such conditions as may be prescribed under these rules or with such modifications, if any, as permitted under these rules or the mining plan or the scheme approved under these rules, as the case may be.

(2) If the quarrying operations are not carried out in accordance with mining plan as prescribed under these rules, the competent authority may order suspension of all or any of the quarrying operations and permit continuance of only such operations as may be necessary to restore the conditions in the quarry as envisaged under the said mining plan. Rule 68 requires that every lessee shall carry out quarrying operations in accordance with the approved mining plan. Rule 68, however, further requires carrying out of quarrying operations “with such conditions as may be prescribed under these rules or with such modifications, if any, permitted under these rules”. Rule 68 thus clearly meant carrying out of the mining operations in accordance with the mining plan. Rule 66 thus has to be read along with Rule 68 and Rule 66 engraft an exception to the general Rule 68 which required that every quarrying operation be in accordance with the mining plan. If it is held that Rule 68 is to override any other Rule of the 2015 Rules pertaining to mining plan, the same shall not be in accordance with the intend and content of Rule 68. We thus are of the view of that Rules 66 and 68 have to be read together and Rule 66 is a category exempted from the mandatory requirement as provided in Rule 68. We thus are not persuaded to accept the interpretation given by Shri P.B.Krishnan, learned counsel appearing for the petitioners in W.P(C) No.4471 of 2015. As observed above, the 2015 Rules have been framed keeping in view of the observations made by the Apex Court in *Deepak Kumar’s* case and there being no challenge to the 2015 Rules, all the parties before us have to act in accordance with the 2015 Rules with regard to carrying out mining operations by means of mining permit/quarrying lease. The State authorities have also to act in accordance with the 2015 Rules and observations as made above.

73. In several Writ Petitions as noted above, petitioners who have quarry permits/mining permit/mining lease have come up seeking police protection. In most of the Writ Petitions validity of the mining permits granted to them have already come to an end. In some of the Writ Petitions validity of the mining permit is continuing. Looking into the fact that the 2015 Rules has been enforced by the State only from 7.2.2015, we are of the view that in cases where quarrying permit/mining permit/mining lease claimed to

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carry mining operations are still in existence, they may approach the District Collector who after taking into consideration the 2015 Rules and the observations made by us in this Judgment may consider and take decision as to whether they are entitled to carry on mining operations. It is only on grant of appropriate clarifications/clearance from the District Collector, petitioners may carrying mining operations and submit application to the Circle Inspector/Sub Inspector concerned for providing police protection.

74. The issues having been considered in the foregoing discussion, now we come to the different groups of Writ Petitions details of which have already been noted. As noted above, the first three Writ Petitions consisting of Group-I, relate to Public Interest Litigations. Prayers in the leading Writ Petition, W.P(C) No.31148 of 2014 are that a mandamus be issued to respondents 1 and 2, State of Kerala and the Director of Mining and Geology to see that all quarrying operations in the Kerala State are permitted by lease by scrupulously following Exhibit P1, i.e., the order of the Government of India Ministry of Environment and Forests dated 18.05.2012. The Second prayer is for restraining respondents 1 and 2 and its subordinate officers from issuing permits and licences invoking the provisions of Kerala Minor Mineral Concession Rules, 1967 for the purpose of mining operations of minor minerals. In view of our answer to the Issues, that mining operations are permissible both by grant of mining/quarry lease as well as by mining permit, prayer of the petitioner that direction to the State to permit mining only by lease, cannot be accepted. As noted above, the 2015 Rules have already enforced in the State of Kerala, now all mining permits, mining lease and quarry lease and other mineral concessions have to be in accordance with the 2015 Rules. Thus all mining operations have to be conducted in accordance with the 2015 Rules as well as the observations made by us in this judgment. Exhibits P3 and P4, Government Orders dated 23.11.2012 and 11.12.2012 have been prayed to be quashed. We have already held that after the judgment of the Apex Court in *Deepak Kumar's* case (supra) and the order of the Government of India, Ministry of Environment and Forest dated 18.05.2012, all grant of mining lease/mining permit for less than 5 hectares have to be in accordance with the environmental clearance as envisaged by the Notification dated 14.09.2006. Thus both the aforesaid Government Orders have to be read accordingly and further the 2015 Rules having framed and enforced by the State, all actions regarding mining operations have to be done in accordance with the 2015 Rules. Further prayer has been made to quash amendment dated 30.06.2014, i.e., Kerala Minor Mineral Concessions (Amendment) Rules, 2014 by which amendments were made in Rule 8 of the 1967 Rules. The 1967 Rules having already superseded by the 2015 Rules, there is no necessity to consider the aforesaid prayer.

75. With regard to other Public Interest Litigation, i.e., W.P.(C) No.20601 of 2014, where petitioners are aggrieved by the unauthorised conduct of granite unit by

respondents 7 and 8 we have already taken the view that mining plan has to be submitted by all existing quarry owners in accordance with Rule 66 read with Rule 68. Petitioners have further prayed that the Grama Panchayat has decided not to renew operation of quarry and metal crusher by its decision dated 29.04.2014. In the facts and circumstances of the case we are of the view that liberty can be given to the petitioner to approach the District Collector who may examine the entitlement of respondents 7 and 8 to carry mining operations in accordance with the observations made by us in this judgment as well as all relevant law including the 2015 Rules. The third Writ Petition which has been filed with regard to the 2015 Rules is W.P.(C) No.4471 of 2015. As noted above, learned counsel Shri P.B.Krishnan has confined his submission to interpretation of Rule 68 of the 2015 Rules. According to the learned counsel as per Rule 68 makes mining operations only by a mining plan which is a mandatory provision. We have already dealt with the question while deciding issue No.VIII and this Writ Petition thus has to be decided accordingly.

76. We come to Group-II Writ Petitions, which have been filed by various petitioners praying for stay of quarrying activities by different private respondents who had obtained quarrying permit/mining lease/mining permits. In the Writ Petitions it has been pleaded that private individuals are carrying mining operations in violation of the judgment of the Apex Court in *Deepak Kumar's* case (case) as well as Government Order dated 14.09.2006 and the order passed by the Government of India, Ministry of Environment and Forests. We have considered all the issues as noted above and we are of the view that interest of justice would be served in giving liberty to all the petitioners and private respondents to approach the District Collector for appropriate clearance for carrying mining operations as per the 2015 Rules and the observations made by us in this judgment. The District Collector has to examine all aspects of the matter as per the law laid down by us in this judgment as well as Rule 2015. The mining operation, if any may be held only after such clearance by the District Collector.

77. Group-III and IV Writ Petitions are by quarry owners/permit owners seeking different reliefs. Group-IV relates to the Writ Petitions filed by quarry owners/permit owners seeking police protection for carrying out their quarrying operation. We have already held that quarrying operation/mining operations by mining lease or mining permit is to be conducted in accordance with the 2015 Rules as well as the observations and directions made by us in this judgment. Interest of justice would be served by giving liberty to all petitioners of Group-III to approach the District Collector for necessary clarification/clearance order and the petitioners may act accordingly. For petitioners who are seeking police protection, liberty is given to them to approach the District Collector for seeking necessary clarification/clearance order regarding their entitlement to carry on mining operations as per the 2015 Rules and the observations made by us in this judgment.

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78. Writ Petition No.7632 of 2014 which is included in Group-III needs a separate consideration since in the said Writ Petition petitioner has prayed for quashing Ext.P9 Government Order dated 19.02.2014 by which the State cancelled the quarry permit granted to the petitioner. Petitioner was granted quarrying lease on 10.03.2010 for ten years to extract building stones from one acre of land in Sy.No.577/1 part. Initially the application was rejected on 18.04.2009 against which appeal was filed which was allowed by the Joint Secretary of the State of Kerala. The Forest Department had preferred a Second Appeal before the 1st respondent where objection was taken that distance between Shenthurni Wild Life Protection Centre and the proposed site is only 2.5 kms. and no-objection from the Forest Department was never obtained. The Second Appeal was disposed on certain undertakings. The State Government has cancelled the mining lease on 10.6.2013. Petitioner filed a Writ Petition No.16940 of 2013 where this Court set aside the order the State Government and directed the Government to pass fresh order. Now the Government has passed a fresh order on 19.02.2014 whereby the Government held that quarrying lease would stand cancelled. The Government in its order noted that property is lying in the midst of reserved forest covered with variety of endemic flora and fauna. It was further held that land in this area is covered by Aryankavu Village, which is one of the 123 Villages notified as EFA in the Kasthurirangan Report. The Forest Department from the very beginning raised objection regarding running of the quarry. The Village having been included in one of the Villages of 123 Villages notified and the Forest Department of the State having not given no objection, the decision of the State Government in cancelling the lease cannot be faulted.

79. Group-V consists of two Writ Petitions and one Writ Appeal. Writ Petition No.4662 of 2014 was filed challenging the order dated 26.06.2013 passed by the District Collector rejecting the application of the petitioner for no-objection certificate to manufacture bricks. Petitioner claimed that he is entitled to mine clay as per permit dated 20.02.2010. Interest of justice will be served by giving liberty to the petitioner for making a fresh application in accordance with the 2015 Rules and the observations made by us in this judgment.

80. Writ Petition No.2636 of 2015 has been filed praying for a mandamus commanding the 2nd respondent to consider and dispose of Exts.P7 to P9 objections and suggestions against the draft 2015 Rules before publishing the final notification framing rules by the State Government. The 2015 Rules having been already published and enforced, this Writ Petition has become infructuous.

81. W.A. No.1566 of 2014 has been filed challenging the judgment of the learned Single Judge dated 23.01.2014 by which decision of the Panchayat rejecting the petitioner's application for issuance of licence to conduct quarry was upheld. No infirmity can be found out in the judgment of the learned Single Judge. However, there shall be

liberty to the petitioner to make fresh application in accordance with the 2015 Rules as well as the observations made by us as noted above.

82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in *Deepak Kumar's* case (supra) did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.9.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.5.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.5.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan.

83. Now we come to Issue No.IX, reliefs which the petitioners are entitled to.

84. In view of foregoing discussions, we dispose of all the Writ Petitions including one Writ Appeal in the following manner:

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(i) Writ Petitions relating to Group - I, Public Interest Litigations are disposed of in accordance with our conclusions and directions contained in paragraph 82.

(ii) All the Writ Petitions relating to Group - II, challenging quarrying operations by private individuals are disposed of with a direction to the District Collector to examine the right of quarrying owners/mining permit owners (private respondents) to carry mining operations and to issue necessary clarifications/clearance only after being satisfied that such mining operations are in accordance with the 2015 Rules as well as the observations made by this Court in the present case.

(iii) Writ Petitions of Groups - III & IV (except WP(C).No.7632 of 2014), by quarry owners as well as quarry owners seeking police protection are disposed of giving liberty to the petitioners to approach the District Collector for carrying on mining operations which clearance shall be issued by the District Collector only after being satisfied that they are entitled to carry mining operations as per the 2015 Rules and the observations made by this Court in the present case.

(iv) W.P(C).No.7632 of 2014 is dismissed upholding the order of State Government dated 19.2.2014 cancelling the quarry lease.

(v) All the three cases of miscellaneous Group are disposed of in the following manner:

(a) W.P(C) No.4462 of 2014 is disposed of giving liberty to the petitioner to submit appropriate application before the competent authority seeking permit of ordinary earth as per the 2015 Rules.

(b) Writ Appeal No.1566 of 2014 is dismissed giving liberty to the appellant to make fresh application before the Panchayat for obtaining licence under the Kerala Panchayat Raj Act after obtaining necessary permit for quarrying operations in accordance with the 2015 Rules.

(c) W.P(C) No.2636 of 2015 is dismissed having become infructuous due to enforcement of 2015 Rules with effect from 07.02.2015.

All the above cases are disposed of accordingly.

Parties shall bear their own costs.

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ITEM NO.19

COURT NO.8

SECTION XI-A

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38313/2019

(Arising out of impugned final judgment and order dated 23-03-2015 in WP(C) No. 31148/2014 passed by the High Court Of Kerala At Ernakulam)

A.K. DEVISON

PETITIONER(S)

VERSUS

ALL KERALA RIVER PROTECTION COUNCIL & ORS.

RESPONDENT(S)

(IA No.180835/2019-CONDONATION OF DELAY IN FILING and IA No.180837/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.180834/2019-PERMISSION TO FILE PETITION (SLP/TP/WP/..) and IA No.180836/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 16-12-2022 This petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH**

**For Petitioner(s) Mr. Abir Phukan, Adv.
Mr. Arjun Garg, AOR
Mr. Vedant Goel, Adv.**

For Respondent(s)

**UPON hearing the counsel, the Court made the following
O R D E R**

Learned Counsel for the petitioner seeks permission to withdraw the present special leave petition.

In view of the statement made, the special leave petition is dismissed as withdrawn.

**(POOJA SHARMA)
COURT MASTER (SH)**

**(R.S. NARAYANAN)
COURT MASTER (NSH)**

താമരശ്ശേരി തഹസിൽദാരുടെ 08.12.2016 ലെ നടപടിക്രമം
(ഹാജർ: മുഹമ്മദ് റഹീഖ് സി.)

വിഷയം:- കരിങ്കൽ ഖനനം - ജീവനും സൗജന്യം ഭീഷണി - നടപടി സ്വീകരിക്കുന്നത് - സംബന്ധിച്ച്.

- സൂചന:-
- 1) ഹനീഫ, മലയിൽ, വീര്യന്ദ്രം എന്നവരുടെ 27.10.2016 തീയതിയിലെ അപേക്ഷ.
 - 2) ശിവപുരം വില്ലേജ് ഓഫീസറുടെ 04.11.2016 തീയതിയിലെ 460/16 നമ്പർ റിപ്പോർട്ട്.
 - 3) കോഴിക്കോട് ജില്ലാ മൈനിംഗ് & ജിയോളജി ഓഫീസ് മേധാവിയുടെ 19.09.2016 ലെ 04/2016-17/GEO/DOZ/M-650/2016 നമ്പർ ഉത്തരവ്.

താമരശ്ശേരി താലൂക്കിൽ ശിവപുരം വില്ലേജ് വീര്യന്ദ്രം ദേശത്ത് റീ.സർവ്വെ 29 ൽ ഉൾപ്പെട്ടതും ശ്രീമതി.ഇന്ദിര.ഇ, ജിയോ എന്റർപ്രൈസസ്, ഏറാടിയിൽ ഹൗസ്, ഇത്യാട് പി.ഒ എന്നവരുടെ ഉടമസ്ഥതയിലുള്ളതുമായ കരിങ്കൽ ക്വാറിയുടെ പ്രവർത്തനം മൂലം സമീപവാസികളുടെ ജീവനും സൗജന്യം ഭീഷണിയാണെന്നും ഇതിനെതിരെ നടപടി സ്വീകരിക്കണം എന്നാവശ്യപ്പെട്ട ശ്രീഹനീഫ എന്നവർ സൂചന 1 പ്രകാരം പരാതി നൽകിയിരുന്നു. സ്പോടനത്തിൽ കരിങ്കൽ ക്ഷണങ്ങൾ വീടിനു മുകളിൽ വന്ന് വീഴുന്നതായും കമ്പസ്റ്റർ, ബ്രെക്കർ, എന്നിവയുടെ പ്രവർത്തനം മൂലം ശബ്ദ മലിനീകരണവും പൊടി ശല്യവും ഉണ്ടാവുന്നതായും പരാതിയിൽ വ്യക്തമാക്കിയിരുന്നു. ഇതു സംബന്ധിച്ച് ശിവപുരം വില്ലേജ് ഓഫീസർ സൂചന 2 പ്രകാരം അന്വേഷണ റിപ്പോർട്ട് സമർപ്പിച്ചതിന്റെ അടിസ്ഥാനത്തിൽ 15.11.2016 ന് ഞാൻ സംഭവ സ്ഥലം നേരിൽ പരിശോധന നടത്തിയിട്ടുണ്ട്, പരാതിക്കാരന്റെ വീട് ക്വാറിയിൽ നിന്നും ഏകദേശം 100 മീറ്റർ അകലത്തിലാണ് സ്ഥിതി ചെയ്യുന്നത്. എല്ലാവിധ ലൈസൻസുകളോടും കൂടിയാണ് ജിയോ എന്റർപ്രൈസസ് 30 വർഷത്തോളമായി ക്വാറി നടത്തുന്നതെന്ന് മനസ്സിലാക്കുന്നു. ക്വാറിയിൽ നിന്നും 5000 മെട്രിക് ടൺ

08.12.16



048058

കരിങ്കല്ല് ഖനനം നടത്താൻ മൈനിംഗ് & ജിയോളജി 19.09.2016 ന് സൂചന 3 പ്രകാരം ഉത്തരവ് നൽകിയിട്ടുണ്ട്. എന്നിരുന്നാലും പരാതിക്കാരായ ഹനീഫ, സഹോദരൻ മുഹമ്മദ് റാഫി എന്നിവരെയും ജിയോ എന്ജിനീയറിംഗ് മാന്വൽ പാർട്ടിണർ ശ്രീമതി.ഇന്ദിര എന്നവരെയും 05.12.2016 ന് എന്റെ മുമ്പാകെ നേരിൽ കേൾക്കുകയും ചെയ്തു.

കരിങ്കല്ല് ഖനനത്തിന് സൂചന 3 പ്രകാരം ഉത്തരവിന്റെ കാലാവധി കഴിയുന്ന 18.12.2016 വരെ പരാതിക്ക് ഇടയില്ലാത്ത രീതിയിലും നിയമവിധേയമായും ഖനനം തുടരുന്നതിന് ശ്രീമതി.ഇന്ദിര എന്നവർക്ക് നിർദ്ദേശം നൽകിക്കൊണ്ടും നിയമാനുസൃത-മല്ലാതെ പ്രവർത്തിക്കുന്നുണ്ടോ എന്ന് ആകസ്മിക പരിശോധന നടത്താൻ ശിവപുരം വില്ലേജ് ഓഫീസർ, ശിവപുരം ചാർജ്ജ് ഓഫീസർ എന്നിവർക്ക് നിർദ്ദേശം നൽകിക്കൊണ്ടും ഈ പരാതി തീർപ്പ് കൽപ്പിക്കുന്നു.

തഹസീൽദാർ

പകർപ്പ്:

- 1. ശ്രീ.ഹനീഫ, മലയിൽ, വീര്യമ്പ്രം.
 - 2. ശ്രീ.മുഹമ്മദ് റാഫി, മലയിൽ, വീര്യമ്പ്രം.
 - 3. ശ്രീമതി.ഇന്ദിര, മാന്വൽ പാർട്ടിണർ, ഏറാടയിൽ, വീര്യമ്പ്രം.
 - 4. വില്ലേജ് ഓഫീസർ, ശിവപുരം.
 - 5. ചാർജ്ജ് ഓഫീസർ, ശിവപുരം.
- } ശിവപുരം വി.ഒ നടത്തി മടക്കേണ്ടതാണ്.

03.08.16

048059~

Proceedings of the Tahasidar, Tamarasserry dtd. 08.12.2016

(Present: Muhammed Rafeeq. C)

Sub: Granite quarrying- threat to life and properties-action to be taken-reg

Ref: 1) Application dtd. 27.10.2016 by Haneefa, Malayil, Veeryambram.

2) Report No. 460/16 dtd. 04.11.2016 of Sivapuram Village Officer.

3) Order No. 04/2016-17/GEO/DOZ/M-650/2016 dtd. 19.09.2016 of the Director, District Mining & Geology, Kozhikode.

By virtue of reference cited as item No. 1 above, Sri Haneefa and others had submitted a complaint stating that the life and property of the nearby residents are at risk due to the operation of the granite quarry belonging to Mrs. Indira E, Geo Enterprises, Eratiil House, Iyad P.O., situated in Re-Survey No. 29 in Sivapuram Village, Veeryambram Desam of Thamarassery Taluk.

It was stated in the complaint that during the blast, pieces of granite are falling on the houses, and there is noise and air pollution due to the operation of the compressor and breaker. In this regard, based on the submission of inquiry report by Village Officer, Sivapuram cited as item No. 2 above, on 15.11.2016, I have personally inspected the site. The complainant's house is situated at a distance of about 100 meters from the quarry. It is understood that Jio Enterprises has been mining for nearly 30 years with all kinds of licences. Though by virtue of reference cited as item No. 3 above, there is an order issued by the Mining & Geology department on 19.09.2016 to extract 5000 MT of granite from the quarry; complainant Hanifa, his brother Muhammad Rafi and Mrs. Indira, Managing Partner of Jio Enterprises were heard personally by me on 05.12.2016.

This complaint is disposed of directing Mrs. Indira to continue mining in accordance with law till 18.12.2016, i.e. the expiration of order to extract granite referred as item No. 3 above without causing any complaint and a further direction to the Village Officer and Sivapuram to cause spot inspection so as to ensure that whether any illegalities are carried out or not. This Complaint is disposed accordingly.

Tahasildar

Copy to:

1. Sri. Haneefa, Malayil Veeryambram } to be returned by Sivapuram V.O
2. Sri. Muhammed Rafi, Malayil, Veeryambram
3. Smt. Indira, Managing Partner, Eradiyil, Veeryambram
4. Village Officer, Sivapuram
5. Charge Officer, Sivapuram

ANNEXURE: R6 (XI)**IN THE COURT OF SUB DIVISIONAL MAGISTRATE, KOZHIKODE**

(Present: Shamin Sebastian)

A.10889/2016

Haneefa Malayil. S/o Kunhahameed, Iyyad PO	}	Petitioner
E Indira Managing Partner, Jeo Enterprises Iyyad PO.	}	Respondent

ORDER

The main grievance of the petitioner is that the respondent is conducting the quarry operation which is threat to the life and property of the petitioner. On 25.10.2016 granite pieces were scattered in to his house and the tiles were broken. The extraction of the granite stone is beyond the permitted quantity and his life is miserable due to the sound and air pollution.

On the petition, the Village officer Sivapuram was directed to conduct the site inspection and to submit the report. The Village Officer submitted the report on 05.11.2016. As per the report two tiles of the roof were seen broken and there were small cracks on the walls of his house, and there were cracks on the walls of the house of his brother also. The distances of the houses from the quarry are 100 and 150 meter respectively.

The conditional order U/s 133(1)(d) was issued directing the respondent to stop the quarry or to appear before this court and show cause why the order should not be enforced.

The counsel for the respondent Sri. Adv P K Dharmaraj appeared and filed the counter statement.

Heard both parties on 17.05.2017. No oral evidence was adduced by both parties. The petitioners argued that the licence obtained by the quarry owner is by means of political and financial influence and no action was taken by the police authority on his complaint. The counsel for the respondent argued that the functioning of the quarry is with all the legal licenses and the complaint of the petitioner is false and requested to dismiss the petitions.

The petitioner produced the following documents.

1. Copy of Stop memo issued by Senior Geologist dated 07.12.2016
2. Letter of Mining & Geology Director No. 10589/M4/2016 dated 18.02.2017
3. PCB Letter No 504/2008 dated 13.03.2017

The respondent produced the following documents.

A.B.
for N/A
17/5/17

1. D& O Licence issued by Secretary Unnikulam Panchayath dated 10.04.2017
2. Movement permit issued by Geologist dated 03.05.2017
3. Order of Hon'ble High Court in OP No.4355/2001
4. Order of Hon'ble High Court in WP(c) 593/2009
5. Judgment in OS 20/11 dated 20.11.2015 of Hon'ble Munsiff Court Kozhikode
6. Judgment in OS.120/08.

The produced documents show that the Mining & Geology department has taken action against quarrying beyond the permitted place.

The respondent produced all the licences to operate quarry. The produced copies of the Judgment of the various litigation shows that many complaints had been raised against the quarry operation before the Hon'ble Munsiff Court Koyilandy and Hon'ble High Court of Kerala. No violation of permit is observed by the Hon'ble Courts.

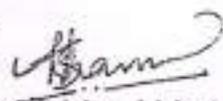
The respondent proved that the functioning of the quarry is as per the valid licences from the authorities. When the violation noticed the concerned departments have taken action against those violations which is evident from the documents produced by the petitioner.

The main grievance of the petitioner is that the quarrying operation is threat to his life and property. The granite pieces scattered into his house and two roof tiles were broken. The only evidence to prove that granite pieces were falling into his house is the report of Village Officer, Sivapuram. No independent evidence was adduced by the petitioner.

In these circumstances, the petition is disposed directing the Senior Geologist, Mining & Geology, Kozhikode and Environmental Engineer, Pollution Control Board, Kozhikode to conduct frequent inspections to verify whether there is any violation of Licence.

The Secretary Unnikulam Panchayath is also directed to verify the violation of D& O licence issued by the secretary on 10.04.2017.

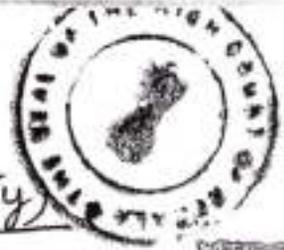
Dated this the 22nd day of May 2017


Sub-Divisional Magistrate
Kozhikode.

1. P & R through Village Officer Sivapuram for S/R
2. Senior Geologist, Mining & Geology, Kozhikode
3. Environmental Engineer, Pollution Control Board, Kozhikode
- ✓ Secretary Panchayath, Unnikulam

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Ext R8(y)



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH JANUARY 2009 / 8TH MAGHA 1930

WP(C).No. 595 of 2009(U)

CMA.6/2008 of SUB COURT, QUILANDY
 IA.1282/08 IN OS.78/2008 of MUNSIFF COURT, QUILANDY

PETITIONERS:

1. K.E. SAHADEVAN, S/O. KANARAN,
RESIDING AT KUNNUMELIDATHIL HOUSE,
P.O. IYYAR, UNNIKULAM, KOZHIKODE.
2. M.C. JITHESH KUMAR, S/O. BHASKARAN,
RESIDING AT MANIKKAM CHALIL HOUSE,
P.O. IYYAR, UNNIKULAM, KOZHIKODE.
3. K.P. BABU, S/O. BAPPUKUTTY,
RESIDING AT MOOLAYIL VALAPPIL HOUSE,
P.O. IYYAR, UNNIKULAM, KOZHIKODE.

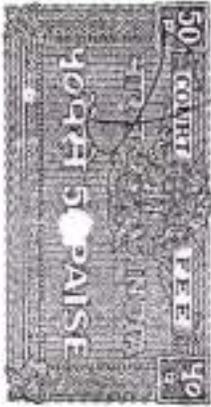
BY ADV. SRI.V.V.SURENDRAN
 SRI.P.A.HARISH

RESPONDENTS:

1. ARAVINDAKSHAN, S/O. RAMAN KUTTY,
RESIDING AT KARUVARUKUNDIYIL HOUSE,
P.O. IYYAR, UNNIKULAM, KOZHIKODE.
2. O.M. INDIRA, W/O. MADHAVAN NAIR,
RESIDING AT ERADIYIL HOUSE,
P.O. IYYAR, UNNIKULAM, KOZHIKODE.

ADV. SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
 ON 28/01/2009, THE COURT ON THE SAME DAY DELIVERED THE
 FOLLOWING:



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EXHIBIT (y) (2)



K.P. Balachandran, J.

W.P.(C)No.595 of 2009 U

JUDGMENT

Heard arguments of counsel on both sides.

2. Petitioners are the plaintiffs in a suit for temporary injunction restraining the respondents/defendants from conducting blasting and excavation of granite stones from the quarry in the scheduled property. It is contended that they are doing so illegally and unscientifically and also destroying the public pathway in the plaint schedule property. The trial court granted an interim injunction after hearing the parties, vide Exhibit P1 order. Even in the said order, it was made clear that the said injunction order will not prevent the respondents/defendants from excavating the granite stones after demarcating 2.12 acres of property covered by Exhibit B7 permit.

3. Respondents/defendants filed I.A.No.649/08 seeking permission to excavate granite stones from 2.12 acres of property covered by Exhibit B7

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Exhibits (y) (3)



WPC 595/09

2

permit. I do not understand the purpose of moving such a petition, as that had been allowed by Exhibit P1 order itself. Vide Exhibit P2 order passed on I.A.No.649/08, the court below observed that Exhibit P1 order on I.A.No.513/08 also permits the petitioners therein (defendants in the suit), who are the respondents herein, to excavate granite stones from the said property. It was clarified further that they are permitted to blast and excavate the rocks in accordance with Exhibit B7 permit. Petitioners have no case that if the blasting is done in accordance with Exhibit B7, there is any grievance for them. In Exhibit P2 order itself, it is further stated that the petitioners/defendants shall do so after demarcating the area as per law and further that if the respondents are in any way aggrieved as to the proper demarcation and marking, they are at liberty to take out a commission and approach that court.

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EXHIBIT (4)



WPC 595/09

3

4. It is the grievance of the petitioners that respondents/defendants have not done demarcation as directed in Exhibit P2 order, whereas, according to the counsel for the respondents, they have demarcated the area with the assistance of the Village Officer and it is only thereafter that they are doing blasting in compliance with Exhibits P1 and P2 orders. Exhibit P2 order is dated 9.4.2008. On 18.9.2008, petitioners filed Exhibit P3 application for getting down a report and plan through the very same Commissioner, who submitted a report and plan earlier, asking for several matters to be ascertained. I do not see any averment in the affidavit accompanying Exhibit P3 that the demarcation of 2.12 acres of property covered by Exhibit B7 had not been done or that the respondents are doing blasting in the quarry not within the area covered by Exhibit B7. The only question that deserved consideration was as to whether quarrying was being done within 2.12 acres

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EXH8(y)(5)



WPC 595/09

4

of property covered by Exhibit B7 permit. I do not see such a request made in Exhibit P3 application. On the same day on which Exhibit P3 application was filed, petitioners filed Exhibit P4 application as well for a prohibitory injunction restraining the respondents from doing quarrying, blasting the rocks and again on the same day, Exhibit P6 application also was filed for prosecuting the respondents. As per Exhibit P7 order passed on I.A. No.1282/08, the injunction application filed by the petitioners, was dismissed. The C.M.Appeal filed assailing the said order was dismissed vide Exhibit P9 judgment by the first appellate court. It is assailing the said judgment, confirming the dismissal of the injunction petition vide Exhibit P7 order, that this writ petition has been filed.

5. I do not find any reason to interfere with the concurrent orders so passed by the courts below for the reason that there is no specific case for the petitioners that, as directed in Exhibit P2

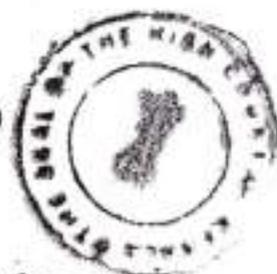
M

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WPC 595/09

5

EXR8(y)(6)



order, the respondents herein have not properly got demarcated 2.12 acres of property as per Exhibit B7 permit and have also not applied for proper demarcation and marking of the said 2.12 acres of property covered by Exhibit B7 permit, though they have asked for several other matters to be got ascertained as per Exhibit P3 application, which is seen to be with intention to create and develop new contentions, which were obviously not there while the court passed Exhibits P1 and P2 orders. Prima facie, I am of the view that it is only the eyesore of the petitioners to see that the respondents do not do any work in the quarry that has prompted them to take up the matters to several courts raising one contention or the other, although inconsistent. If at all their grievance is that the property covered by Exhibit B7 permit is not the property within which quarrying is done, the petitioners may file an application to remit back the commission report to the same Commissioner to

M/

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EdRsgy (2)



WPC 595/09

6

verify that aspect, viz., as to whether quarrying is being done in any portion of the quarry, which is stated to be extending to about 10-15 acres other than in the portion of 2.12 acres covered by Exhibit B7 permit or the permit thereafter renewed, which is stated to be the one now in force and thereafter to seek for appropriate directions.

This writ petition is disposed of with the above observations.

28th January, 2009
tkv

sd/-
(K.P.Balachandran, Judge)

True copy

PA to Judge

U True Copy U


EXAMINER

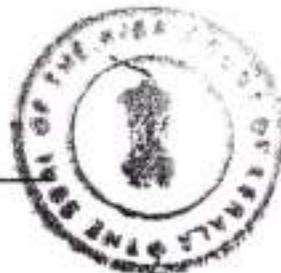
This is the true copy of the document marked as Exhibit Annexure referred in the above case.
ADVOCATE

27

ANNEXURE: R6 (XIII)

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Ext R8 (3)



IN THE HIGH COURT OF KERALA AT ERNAKULAM

Presents

The Honourable Mr. Justice K.A. Abdul Gaffoor

Tuesday, the 27th day of ^{August} July, 2002/5th Bhadra, 1924O.P.NO.4355 of 2001

PETITIONER:

Muhammed Raffin. s/o. Kunjammed Hajji,
aged 25 years, Malayil House, P.O. Iyyad,
(via) Unnikulam, Kozhikode Dist. now functioning
as Secretary Koyilottupara Parishara Samasthama
Samithi, Veerambra, Iyyad-P.O. Unnikulam,
Koyilandi Taluk, Kozhikode.

By Advocates N/s. Robini-V. Menon
T.A. Unnikrishnan
George Thomas

RESPONDENTS:

1. The District Collector, Kozhikode.
2. The Deputy Chief Controller of Explosives,
South Circle, Sastri Bhawan, Chennai.
3. The Director General, Mines Safety & 7 Geology,
Karnataka.
4. Senior Environmental Engineer, Pollution
Control Board.
5. The Dy. S.P. Thamarassery, Kozhikode Dist.
6. Madhavan Nair, s/o. Dakshayani Anna, Eradillyil
House, Mangad Desom, Iyyad ansom, Koyilandi Taluk,
Kozhikode Dist.
7. Padmakshi Anna, w/o. Madhavan Nair, Eradillyil
House, Mangad Desom, Iyyad Ansom, Koyilandi
Taluk, Kozhikode Dist.
8. O.M. Mohankumar, s/o. Kalyani Anna, Olakkal
House, Thiruvangad desom, Kottar ansom,
Koyilandi Taluk.



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Extra (3) - (2)



9. Prasanna, d/o. Ramankutty, Karuvarakkandy House, Iyyad nason, Veerianbrum Desom, Koyilandi Taluk
10. Aravindakshan, s/o. Ramankutty, Karuvarakkandy House, Iyyad nason, Veerianbrum Desom, Koyilandi Taluk.
11. Suresh Babu, s/o. Ramankutty, Karuvarakkandy House, Iyyad nason, Veerianbrum Desom, Koyilandi Taluk.
12. K.M. Mammed Kutty, s/o. Tharavail Haji, Mundokkara House, Namanda, Kozhikode.
13. Sainaba, w/o. K.M. Muhammed Kutty, Mundokkara House, Namanda, Kozhikode.
14. Umsukulso @ Umzu, d/o. Noosa, Mundokkara House, Namanda, Kozhikode.

R2, R3 By Advocate Mr. S. Maralidharan

R4 By Advocate Mr. Babu Joseph Karukapadath

R1 + R5 By Govt. Pleader Sri. P. V. Lonachan

R10, R11, R6 By Advocate Mr. K. P. Chandapani

This original petition having been finally heard on 27.8.2002, the Court on the same day delivered the following

- 60 -

Extr R 8 (Z) (3)



K.A.ABDUL GAFFOR, J.

O.P.No.4355 of 2001 R

Dated this the 27th day of August, 2002.

JUDGMENT

The petitioner has approached this court seeking a direction to respondents 1 to 5 to take immediate steps to shut down the quarry which is being conducted by respondents 6 to 14 in Umikulam Panchayat on the ground that they are conducting quarrying operation without the required licences and seeking a direction to stop causing nuisance and to stop the compressing work" as averred in para 8 of the original petition. The allegation is that their complaint fell on deaf ears as the authorities did not attend to. It is contended by respondents that they are having the necessary licence and permit. The petitioner now submits that the petitioner does not have quarrying permit. But it is contended before me by the respondents that, had there been a specific averment to that effect in the original petition, they ought to have produced the necessary licence. They do possess all the necessary permits and licences for conducting quarrying operations.

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EDR R 8(2) (4)



Accordingly, original petition is disposed of as follows: The first respondent shall verify whether the said respondents do possess the necessary licences. As and when demanded, the said respondents shall produce the necessary documents before the District Collector, who shall conduct an enquiry within two months, with due notice to the parties.

Sd/-
(K.A. ABDUL GAROOR)
JUDGE.

sk/-

✓

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Ear R 8(2) (5)



ORDER ON CMP. NO. 7155/01, 15756/01, 59360/01
& 13422/02 in OP-4355/01

Dismissed

27.8.2002

By/- K.A. Abdul Gafoor, Judge

APPENDIX

PETITIONER'S EXTS:

- Ext.P1. Copy of photographs of quarry and compressor.
- Ext.P2. Copy of photograph of tree which has been damaged due to falling of granite pieces on its bark.
- Ext.P3. Copy of photographs of the cracks developed in the building near the quarry.
- Ext.P4. Copy of representation dt. 19.1.01.
- Ext.P5. Copy of photograph of Maana.

RESPONDENTS EXTS:

- Ext.R2(a) Copy of licence dt. 9.5.2000.
- Ext.R2(b) Copy of separate endorsement dt. 6.6.2000.

RESPONDENTS EXTS:

- Ext.R6(1) Copy of Agreement entered in between the 6th respondent and Governor of Kerala, dt. 30.1.95.
- Ext.R6(2) Copy of receipt No. 73 from Book No. 5163.
- Ext.R6(3) Copy of licence No. KL-999/E dt. 9.5.2000.

ANNEXURE I: Copy of letter No. G-AB/1092-1000 dt. 3.4.01.

TRUE COPY



This is the true copy of the document
marked as Exhibit R 8 (2)
Annexure referred
in the above case. *[Signature]*
ADVOCATE

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ANNEXURE: R6 (XIV)

In the Court of Sub Divisional Magistrate, Kozhikode
(Present K.K.Rajan)
A-8877/11

- 1) Sunil Kumar
- 2) Sathiyar
- 3) Balan. C.K.
- 4) Baveesh. C.K.
- 5) Rajeesh. C.K.

Chettiamkandiyil
Sivapuram

Indiramma & Others
Eradiyil
Sivapuram Village

Petitioners

Respondents

Order

This is the petition against the granite quarry of the respondents. The Village Officer has inspected the quarry and reported that the quarry has the valid licences from the authorities. Notice was issued to the parties to appear before this Court. The respondent was present but the petitioners were continuously absent. Hence the petition is dismissed.

Dated this the 9th day of March 2012 ✓

Sub Divisional Magistrate

Petitioner & Respondent through V.O. Sivapuram



This is the true copy of the document
marked as Exhibit *R & Caa*
~~Annexure~~ referred
in the above case *C. J. J.*
ADVOCATE

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 18TH DAY OF DECEMBER 2017/27TH AGRAHAYANA, 1939

WP(C).NO. 21713 OF 2017 (L)

PETITIONERS :

1. SHYJU K.E.
AGED 40 YEARS, S/O MUKUNDAN K.E,
RESIDING AT KUNNUMAL, EDATHIL HOUSE,
IYYAD PO, UNNIKULAM VIA, KOZHIKODE.673574.
2. MUHAMMED RAFI,
AGED 42 YEARS, S/O KUNHAMMED HAJI,
RESIDING AT MALAYIL VEEDU, IYYAD PO,
UNNIKULAM VIA, KOZHIKODE.673574.
3. BALAN C.K.
AGED 60 YEARS, S/O APPUKUTTY,
RESIDING AT CHETTINAKANDI VEEDU,
IYYAD PO,UNNIKULAM VIA, KOZHIKODE.673574.
4. MUHAMMED SHIJAS,
AGED 29 YEARS, S/O ABDURAHIMAN MASTER,
RESIDING AT VENGALATHU VEEDU,
IYYAD PO, UNNIKULAM VIA, KOZHIKODE.673574.

BY ADVS.SRI.RAJAN VISHNURAJ
SRI.V.HARISH

RESPONDENTS :

1. STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF INDUSTRIES, SECRETARIAT,
THIRUVANANTHAPURAM.695001.
2. DEPUTY DIRECTOR GENERAL,
DIRECTORATE OF MINES SAFETY,
SOUTHERN ZONE, BENGALURU-560029.

WP(C).NO. 21713 OF 2017 (L)

3. THE DIRECTOR OF MINE AND GEOLOGY,
DIRECTORATE OF MINING AND GEOLOGY,
KESAVADASAPURAM, PATTOM PO,
THIRUVANANTHAPURAM.695004.
4. THE DISTRICT COLLECTOR,
KOZHIKODE, CIVIL STATION,
KOZHIKODE DIST.673001.
5. THE GEOLOGIST, DISTRICT OFFICE,
DEPARTMENT OF MINING AND GEOLOGY,
KOZHIKODE.673001.
6. ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, KOZHIKODE.673002.
7. UNNIKULAM GRAMA PANCHAYAT,
EKAROO, KOZHIKODE.673574.
REPRESENTED BY ITS SECRETARY.
8. GEO ENTERPRISES QUARRYING UNIT,
IYYAD PO, UNNIKULAM VIA, KOYILANI,
KOZHIKODE-673574,
REPRESENTED BY ITS MANAGING PARTNER E. INDIRA.

R1 TO R5 BY GOVERNMENT PLEADER
R2 BY SRI.T.V.VINU, CGC
BY SRI.N.NAGARESH, ASG OF INDIA
R6 BY SRI. T.NAVEEN SC,
R7 BY ADV. SRI.T.SHIHABUDHEEN
R8 BY ADV. SRI.MILLU DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-12-2017, THE COURT ON 18-12-2017 DELIVERED THE
FOLLOWING:

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.21713 Of 2017 (L)
.....

Dated this the 18th day of December, 2017

J U D G M E N T

The petitioners, four in number, are residents of Shivapuram village of Thamarassery Taluk (old Koyilandy Taluk) in Kozhikode district, where mining operations are carried on by the 8th respondent in an extent of 2.6305 hectares in Sy.No.29 of Shivapuram village. In the writ petition, the petitioners are aggrieved by the said mining operations carried on by the 8th respondent and, it is their contention that the mining operations are being carried on in areas beyond the leased area, and by violating the distance criteria from nearby households. It is their case that, while the permission granted to the 8th respondent by the Director of Mining and Geology is only to mine 15000 MT of granite building stone per year, the 8th respondent is exceeding the said limit. It is further contended that the mining activities are currently being carried on by the 8th respondent in an unscientific manner and without adhering to the procedures contemplated under the mining laws. In particular, it is stated that blasting operations are being carried on without appointing a certified

Blaster as contemplated under the Metalliferous Mines Regulations, 1961 and that, the mines are worked without following the practice of bench cutting. The prayers in the writ petition are, *inter alia*, to direct respondents 1 and 3 to cancel the mining lease granted to the 8th respondent, to declare that the 8th respondent is not entitled to conduct further mining activities and to hold that the 8th respondent is liable to pay compensation for damages caused on account of illegal mining on the principle of polluter pays.

2. A counter affidavit has been filed on behalf of the 8th respondent, wherein it is stated that the 8th respondent was constituted as a partnership firm in 1987, and that a quarrying lease was initially granted to it in 1988 for a period of 12 years, and thereafter, extended in 1995 and 2010. The quarrying lease dated 19.04.2010 is produced as Ext.R8(b) along with the counter affidavit and the said lease agreement indicates that it is valid upto 18.04.2022. It is pointed out that the 8th respondent has obtained the D & O license from the Panchayat (Ext.R8(c)), valid upto 01.02.2018, the consent from the Pollution Control Board (Ext.R8 (d)), which is valid upto 01.02.2018, license under the Explosives

Act (Ext.R8(g)), Blaster/Mining Mate Certificate (Ext.R8(h)) and all the required consents/authorisations under the Metalliferous Mines Regulations (Ext.R8(i) to Ext.R8(l)). Placing reliance on the decision of this Court in **All Kerala River Protection Council v State of Kerala [2015 (2) KLT 78]**, it is pointed out that, inasmuch as the mining area is less than five hectares, and the quarrying lease was granted prior to 18.05.2012, an environment clearance is not required by the said respondent for carrying on mining operations during the validity of the current lease. It is the definite stand of the 8th respondent that, while the Pollution Control Board had pointed out certain shortfalls through a notice dated 13.03.2017, immediate steps were taken to remedy the same and the matter was informed to the Pollution Control Board through a reply dated 20.04.2017 (Ext.R8(n)), to the satisfaction of the Pollution Control Board. As regards the allegation that the mining operations are currently been carried out within the prohibited distance from nearby households, the respondents would vehemently deny the same and refer to the report of the Advocate Commissioner, which indicates that no such violation of prohibited distance has been occasioned by the said respondent. The 8th respondent also attributes *mala fides* to the petitioners,

who are stated to have instigated earlier rounds of litigation against the said respondent.

3. In a statement filed by the 5th respondent Geologist, it is averred that the 8th respondent had mined some mineral from outside the leased areas, and when the said offence was detected, the said respondent compounded the same, and amounts due to the Government towards unauthorised extraction were paid by the 8th respondent. It is pointed out that the operation beyond the lease area has since been stopped. It is the stand of the 5th respondent that the 8th respondent is now carrying on mining operations in a scientific manner and in accordance with the mining plan and under the supervision of the Mines Manager. It is stated that an inspection conducted by the 5th respondent has not revealed any environmental damage on account of mining operations carried on by the 8th respondent and the water table is also not affected by the quarrying operations carried on by the 8th respondent.

4. In a statement filed on behalf of the 2nd respondent, Deputy Director General of Mine Safety, reference is made to an

inspection conducted in February 2017, when it was noticed that the depth of the mine was about 20 meters and the bench height as varying from 6 metres to 20 metres. It is stated that when the defects were pointed out to the 8th respondent, he has rectified the same by appointing a Mining Manager as also a certified Blaster to supervise the blasting operations.

5. At the instance of the petitioners, an Advocate Commissioner was also appointed by this Court to report on the factual aspects regarding location of buildings in the vicinity of the mining area so as to ascertain whether there were any buildings located in prohibited distances from the mining area. The Advocate Commissioners report indicates that the distance from the boundary of the leased area to the petitioners' houses are 109.6 metres in the case of the 1st petitioner, 63.0 metres in the case of the 2nd petitioner, 104.1 metres in the case of the 3rd petitioner and 127.5 metres in the case of the 4th petitioner. This is as against the claim of the petitioners in the writ petition that their houses were situated at distances of 75 metres, 35 metres, 48 metres and 60 metres respectively from the leased area.

6. I have heard Sri.Harish Vasudevan, the learned counsel appearing for the petitioners, Sri.Roshan Alexander, the learned counsel for the 8th respondent, Sri.T.Naveen, the learned Standing counsel for the 6th respondent, the learned Government Pleader appearing for the official respondents of the State Government, the learned Central Government counsel Sri.T.V.Vinu, for the 2nd respondent and the learned Standing counsel Sri.T.Shibudheen, for the 7th respondent Panchayat.

7. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that, the mining operations carried on by the 8th respondent are pursuant to Ext.P6 quarrying lease, which among other conditions also mandates that quarrying operations shall not be carried out within the prohibited distances from roads, buildings, inhabited cites, burial grounds etc., shown on the plan annexed to the mining lease. It is not the case of the petitioners herein that their residential buildings are shown in the plan that was annexed to the mining lease that was granted to the 8th respondent. That apart, the lease of 2010 itself is in renewal of earlier leases that were granted to the 8th respondent since 1988. Under the

circumstances, there is a good possibility that the residential houses of the petitioners came up in the area, subsequent to the commencement of mining operations by the 8th respondent. In that event, the petitioners would not be entitled to allege violation of the conditions of the lease granted to the 8th respondent or violation of the statutory rules regulating mining operations since it would be a case where the petitioners chose to "come to the nuisance". As already noted, in the absence of any material to suggest that the residences of the petitioners were put up before the grant of the mining lease to the 8th respondent, this Court would have to infer that the residential houses were not there at the time when the lease was initially granted to the 8th respondent and mining operations commenced by the said respondents. At any rate, the report of the Advocate Commissioner also indicates that the petitioners houses are currently located at distances well beyond the prohibited distances indicated in the mining lease and the statutory rules. Under such circumstances, I am not persuaded to accept the contention of the petitioners that the mining operations carried on by the 8th respondent are in violation of the distance norms stipulated for the said activity. As regards the other violations alleged, I find from the statements of the 2nd and

5th respondents that although certain shortfalls were noticed by the said authorities in the matter of working of the mines, the said defects were rectified by the 8th respondent immediately on it being pointed out to the satisfaction of the statutory authorities. Further, when the defect pointed out constituted an offence, which could be compounded, the 8th respondent choose to do so, in accordance with law, by paying the dues to the State Government over and above the compounding fee payable. I, therefore, find that the factual aspects of the case as supplemented by the report of the Advocate Commissioner, do not make this out to be a case where this Court should interdict the mining operations currently carried on by the 8th respondent under cover of the necessary statutory licences, permissions and consents. The writ petition is therefore, dismissed without prejudice to the right of the petitioners to alert the statutory authorities in the event of any violation, of statutory provisions by the 8th respondent, coming to their notice.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

WP(C).NO. 21713 OF 2017 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: A TRUE PHOTOCOPY OF THE RECEIPT OF THE 1ST PETITIONER MOTHER'S PROPERTY
- EXHIBIT P2: A TRUE PHOTOCOPY OF THE TAX RECEIPT OF THE 2ND PETITIONER'S PROPERTY.
- EXHIBIT P3: A TRUE PHOTOCOPY OF THE TAX RECEIPT OF THE 3RD PETITIONER'S PROPERTY.
- EXHIBIT P4: A TRUE PHOTOCOPY OF THE TAX RECEIPT OF THE 4TH PETITIONER'S ANCESTRAL PROPERTY.
- EXHIBIT P5: A TRUE PHOTOCOPY OF THE PROCEEDINGS DATED 22.3.2010 OF THE 3RD RESPONDENT.
- EXHIBIT P6: A TRUE PHOTOCOPY OF THE LEASE DATED 19.4.2010 GRANTED TO THE 8TH RESPONDENT.
- EXHIBIT P7: A TRUE PHOTOCOPY OF THE REPORT OF THE VILLAGE OFFICER, SHIVAPURAM TO THE THASILDAR TAMARASSERY.
- EXHIBIT P8: A TRUE PHOTOCOPY OF THE INSPECTION REPORT BY THE 5TH RESPONDENT.
- EXHIBIT P9: A TRUE PHOTOCOPY OF THE COMMUNICATION DATED 9.11.2016 FROM THE OFFICE OF THE SENIOR GEOLOGIST KOZHIKODE.
- EXHIBIT P10: A TRUE PHOTOCOPY OF THE STOP MEMO DATED 7.12.2016 ISSUED BY THE SENIOR GEOLOGIST KOZHIKODE.
- EXHIBIT P11: A TRUE PHOTOCOPY OF THE RTI REPLY DATED 3.2.2017 ISSUED FROM THE OFFICE OF THE 5TH RESPONDENT.
- EXHIBIT P12: A TRUE PHOTOCOPY OF THE COMMUNICATION DATED 18.2.2017 ISSUED FROM THE OFFICE OF THE 3RD RESPONDENT.
- EXHIBIT P13: A TRUE PHOTOCOPY OF THE CONSENT TO OPERATE DATED 4.5.2012 ISSUED BY THE 6TH RESPONDENT.

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- EXHIBIT P14: A TRUE PHOTOCOPY OF THE RENEWED CONSENT TO OPERATE DATED 9.11.2015 ISSUED BY THE 6TH RESPONDENT.
- EXHIBIT P15: A TRUE PHOTOCOPY OF THE FILE NOTE OF THE INSPECTION CONDUCTION BY THE PCB OFFICIALS.
- EXHIBIT P15(A): A TRUE PHOTOCOPY OF THE NOTICE DATED 13.3.2017 ISSUED BY THE 6TH RESPONDENT.
- EXHIBIT P16: A TRUE PHOTOCOPY OF THE CERTIFICATE OF COMPETENCY OF THE 8TH RESPONDENT'S BLASTER VIZ. MR.P. RANGASAMY.
- EXHIBIT P17: A TRUE PHOTOGRAPH OF ILLEGAL MINING ACTIVITIES CARRIED OUT BY THE 8TH RESPONDENT.

RESPONDENT(S)' EXHIBITS :

- EXHIBIT R8(A): PHOTOCOPY OF ACKNOWLEDGMENT REGISTRATION OF FIRMS, KERALA, DATED 20.3.1987, ISSUED BY THE REGISTRAR OF FIRMS, KERALA, TO THE R8.
- EXHIBIT RB(B): PHOTOCOPY OF QUARRYING LEASE, DATE 19/4/2010, REFERRED TO IN THE COUNTER AFFIDAVIT.
- EXHIBIT R8(C): PHOTOCOPY OF D&O LICENCE, BEARING NO 135/2017 ISSUED BY 7TH RESPONDENT TO R8 ON 10/4/2017 VALID UPTO 1/02/2018.
- EXHIBIT R8(d): COPY OF CONSENT VARIATION ORDER DT 9/11/2015, VALID UP TO 1/02/2018, ISSUED BY R6 IN FAVOUR OF R8, VIDE REF. NO.PCB/KKD/DO/501/2008.
- EXHIBIT RB(E): PHOTOCOPY OF MOVEMENT PERMIT, BEARING NO.01/2017-18/GEO/DOZ/M-961/2017 DATED 3.5.2017 ISSUED BY THE COMPETENT AUTHORITY IN FAVOUR OF 8TH RESPONDENT.
- EXHIBIT R8(F): PHOTOCOPY OF MOVEMENT PERMIT, BEARING NO.02/2017-18/GEO/DOZ/M-961/2017 DATED 24.5.2017 ISSUED BY THE COMPETENT AUTHORITY IN FAVOUR OF R8.

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- EXHIBIT R8(G): PHOTOCOPY OF EXPLOSIVES LICENCE, BEARING NO. E/SC/KL/22/717(E30916) DATED 9.9.2015 ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, CHENNAI, IN FAVOUR OF R8.
- EXHIBIT R8(H): PHOTOCOPY OF MINING MATE'S CERTIFICATE OF COMPETENCY, DATED 4.6.1987, REFERRED TO IN THE COUNTER AFFIDAVIT
- EXHIBIT R8(I): COPY OF AUTHORIZATION, DT 21/3/2017, BEARING NO. SZ/BGR/KER/KOZI/24/AUTH-34(6)/P-137/2016-17/311 ISSUED BY THE R2 IN FVOUR OF THE R8.
- EXHIBIT R8(J): PHOTOCOPY OF MINE FORMAN'S CERTIFICATE COMPETENCY, VIDE NO.3751 DATED 16.11.2001 ISSUED BY THE DEPUTY DIRECTOR OF MINES SAFETY.
- EXHIBIT R8(K): PHOTOCOPY OF PERMISSION TO HOUSE HEAVY EARTH AND MOVING MACHINERY(HEMM), DATED 28.6.2017, ISSUED BY DIRECTOR OF MINES SAFETY, IN FAVOUR OF 8TH RESPONDENT, VIDE NO. SZ/BGR/106(2)(B)/P-24/2017-18/815.
- EXHIBIT R8(L): PHOTOCOPY OF SURFACE PLAN, REFERRED TO IN THE COUNTER AFFIDAVIT.
- EXHIBIT R8(M): PHOTOCOPY OF NOTICE, BEARING NO.PCB/KKD/DO/501/2008 DATED 13.3.2017 ISSUED BY THE POLLUTION CONTROL BOARD TO 8TH RESPONDENT.
- EXHIBIT R8(N): PHOTOCOPY OF REPLY VIDE PCB/KKD/DO/501/2008 DATED 20.4.2017 SUBMITTED BY 8TH RESPONDENT BEFORE 6TH RESPONDENT.
- EXHIBIT R8(O): PHOTOCOPY OF APPLICATION DATED 15.1.2009 UNDER THE RTI ACT, REFERRED TO IN THE COUNTER AFFIDAVIT.
- EXHIBIT R8(P): PHOTOCOPY OF REPLY DATED 15.1.2009 ISSUED BY 7TH RESPONDENT PANCHAYAT TO 8TH RESPONDENT.
- EXHIBIT R8(Q): PHOTOCOPY OF PROCEEDINGS OF THE TAHSILDAR THAMASSERRY, VIDE NO.D1-16693/16 DATED 8.12.2016.

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- EXHIBIT R8(R): PHOTOCOPY OF ORDER NO.A. 10889/2016 DATED 22.5.2017 OF THE SUB DIVISIONAL MAGISTRATE KOZHIKODE
- EXHIBIT R8(S): PHOTOGRAPH SHOWING SPACE WHERE QUARRY OPERATION IS BEING CONDUCTED BY THE 8TH RESPONDENT, PRESENTLY.
- EXHIBIT R8(T): PHOTOGRAPH SHOWING TALE LIKE PORTION, HAVING THE PRESENCE OF TWO WATER BODIES WHERE QUARRY OPERATION IS NOT BEING CONDUCTED BY THE 8TH RESPONDENT AT PRESENT.
- EXHIBIT R8(U): PHOTOGRAPH SHOWING TILE LIKE PORTION, HAVING THE PRESENCE OF TWO WATER BODIES WHERE QUARRY OPERATION IS NOT BEING CONDUCTED BY THE 8TH RESPONDENT AT PRESENT.
- EXHIBIT R8(v): PHOTOGRAPH SHOWING THE PRESENCE OF TWO WATER BODIES WHERE QUARRYING OPERATIONS ARE NOT PRESENTLY DONE BY R8.
- EXHIBIT R8(W): PHOTOGRAPH SHOWING THE PRESENCE OF TWO WATER BODIES WHERE QUARRYING OPERATIONS ARE NOT PRESENTLY DONE BY 8TH RESPONDENT.
- EXHIBIT R8(X): PHOTOCOPY OF PROCEEDINGS DATED 3.5.2016 ISSUED TO THE 1ST PETITIONER UNDER SECTION 82 BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERAMBRA, IN C.C. NO.833 OF 2013.
- EXHIBIT R8(Y): PHOTOCOPY OF JUDGMENT OF THIS HONOURABLE COURT, DATED 28.1.2009, RENDERED IN W.P.(C) NO.595 OF 2009 U.
- EXHIBIT R8(Z): PHOTOCOPY OF JUDGMENT DATED 27.8.2002 RENDERED BY THIS HONOURABLE COURT IN O.P.NO.4335 OF 2001.
- EXHIBIT R8(AA): PHOTOCOPY OF ORDER OF THE SUB DIVISIONAL MAGISTRATE, KOZHIKODE, DATED 9.3.2012 IN A-8877/11

ADVOCATE COMMISSION'S ANNEXURES :

- ANNEXURE 1: NOTICE OF INSPECTION ISSUED TO THE PARTIES.

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- ANNEXURE 2: LIST OF ATTENDEES PRESENT DURING THE COMMISSION.
- ANNEXURE 3: WORK MEMO FILED BY COUNSEL FOR THE PETITIONERS.
- ANNEXURE 4: WORK MEMO FILED BY COUNSEL FOR THE R8.
- ANNEXURE 5: SURVEY PLAN WITH ORIGINAL CO-ORDINATES OBTAINED FROM THE GEOLOGIST.
- ANNEXURE 6: LATITUDINAL AND LONGITUDINAL CO-ORDINATES RECORDED AND SIGNED BY THE SENIOR GEOLOGIST AT SITE.
- ANNEXURE 7: ROUGH SKETCH PREPARED BY THE ADVOCATE COMMISSIONER (SKETCH NO.1).
- ANNEXURE 8: SURVEY SKETCH PREPARED BY THE TALUK SURVEYOR (SKETCH NO.2)
- ANNEXURE 9: SKETCH PREPARED BY R5, INDICATING PRESENT MINING AREA (SKETCH NO. 3)
- ANNEXURE 10: SKETCH PREPARED BY R5, INDICATING EXCESS MINED AREA (SKETCH NO.4)
- ANNEXURE X SERIES: RELEVANT PHOTOGRAPHS IN RELATION TO THE COMMISSION.
- ANNEXURE 11(a): BILL ISSUED BY PHOTOGRAPHER HIRED BY ADVOCATE COMMISSIONER.
- ANNEXURE 11(b): STATIONARY BILL.

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P.S. TO JUDGE

bp

Recd 3/11/17

BEFORE THE HON'BLE HIGH COURT OF KERALA

I.A. No. 15083 of 2017

in

W.P (C). No. 21713 of 2017

Shyju K.E. & Ors.

Petitioners

Vs.

State of Kerala & Ors.

Respondents

COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER
RAHUL VARGHESE

RAHUL VARGHESE
ADVOCATE COMMISSIONER

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Dated this the 2nd day of November, 2017

Adl-
RAHUL VARGHESE
ADVOCATE COMMSSIONER

TRUE COPY
R. V. K.
ADVOCATE

BEFORE THE HON'BLE HIGH COURT OF KERALA

I.A. No. 15083 of 2017
in
W.P (C). No. 21713 of 2017

Shyju K.E. & Ors. : Petitioners

Vs.

State of Kerala & Ors. : Respondents

COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER

RAHUL VARGHESE

1. As per the order passed by this Hon'ble court, I have been deputed as the advocate commissioner to ascertain and report the facts in terms of the prayer made in the commission application I.A. 15083 of 2017 filed by the Petitioners and also to ascertain the facts in terms of the work memo submitted by the 8th Respondent. The 5th Respondent Geologist was also directed to provide necessary assistance to the Advocate Commissioner.
2. In consultation with counsel for all the parties concerned, the date of site inspection was fixed on 09.10.2017 at 10.30 AM at the quarry site. Notice was served on the counsel for all parties concerned. A copy of the notice, excluding enclosures is produced as **Annexure-1**. During the interaction between the Advocate Commissioner with the Senior Geologist on 03.10.2017, it was informed that the office GPS equipment was not fully functional, therefore the learned Government Pleader was requested to make arrangements with Taluk Surveyor for proper equipment and personnel, if required, with the intervention of the 4th Respondent District Collector, to carry out the commission. Counsel appearing for the Petitioners and the 8th Respondent were also requested to inform the nature of work in advance so that necessary arrangements could be made.
3. At the time of inspection the respective counsel for the Petitioners and the 8th Respondent, Petitioners 1 to 4, Respondents 2, 5, 6, 7 and 8 were present at the quarry site. The Taluk Surveyor, Sri. Rijilesh and the photographer hired by the Advocate Commissioner from Kozhikode were also present. The presence of other relevant persons in connection with the commission was also duly noted. The list of attendees is produced as **Annexure-2**. The counsel for the Petitioner and the counsel for the 8th Respondent filed their respective work memos at site, prior to inspection, which are produced as

Annexure-3 and **Annexure-4**, respectively. The commission commenced at 10.30 A.M. and closed at 7.00 PM.

4. NATURE OF THE QUARRY SITE:

The 8th Respondent's quarry site is situated in Veeyambram Desam, Sivapuram village, falling within Kozhikode district limits. The 8th Respondent has been conducting mining operations for the past 30 years in the quarry site and lease agreements were executed in the past, between the 8th Respondent and the Government for that purpose. In the subsisting lease agreement executed on 19.04.2010, out of a total extent of around 15 acres owned by the 8th Respondent, an area of 2.6305 hectares, (which is equal to) 6.50 acres, in Re-survey No. 29 of Asokapuram Village of Kozhikode District, has been allocated to the 8th Respondent by the Government for mining purposes. The aforesaid aspects have been confirmed by the Senior Geologist at site. A visual examination of the quarry site also shows that the quarry site has been mined to varying depths in several areas, within the external protection boundary wall and the existing lease area cannot be distinguished, without the boundary points.

5. USE OF TOTAL STATION SURVEY TO MEASURE DISTANCE:

5.1 As per the affidavit filed in support of the commission application I.A. No.15083 of 2017 and the prayers sought for, the 4th Petitioner had sought for appointment of Advocate Commissioner to ascertain whether the present quarry lease, was executed in violation of the distance criteria. Both the Petitioners' counsel and the 8th Respondent's counsel, required measurement of distances from the Petitioners' houses, nearest residential buildings and nearest roads as per their respective work memos.

5.2 It is submitted that the lease boundary of the existing lease area was only marked out with eight yellow boundary points (referred to as BP for short), without any fencing interlinking the boundary points. In the absence of any fencing indicating the lease boundary, it was not possible to measure the distance from the Petitioners' house or nearest houses or roads, to the lease boundary using tape measurements. It is also submitted that the lease boundary points inside the quarry, were at varying elevations from each other and some boundary points were located in remote areas which were not safe nor easily accessible. There is an external quarry compound protection wall and fencing, around the quarry. But the external protection wall/fencing around the quarry site is at a much higher elevation compared to the lease boundary points located inside the quarry site. Even outside the external

protection wall, the terrain was extremely sloping in nature, with a lot of unevenness and vegetations, rendering it non-feasible for measurement of distance using tape measurements. The Senior Geologist, R-5 also had informed and demonstrated that his GPS equipment was not functioning properly, to measure the distance. The Assistant Environmental Engineer, R6, Sri. Mukundan from Kerala State Pollution Control Board also mentioned that no functioning equipment was available at his office to measure the distance. In the above circumstances, considering the nature of the work involved and the nature of the terrain, measurement of distances using Total Station Survey was resorted to, as suggested by the Taluk Surveyor. The taluk Surveyor procured the total station equipment. With the help of total station, the boundary points were plotted and by connecting the boundary points, the lease boundary was identified and measurement of closest distance from the lease boundary was measured using 'Auto cad' software by the taluk Surveyor and survey map (Sketch No.2) has been prepared.

6. WORKS UNDERTAKEN BY THE COMMISSION:

- 6.1 The advocate commissioner inspected the quarry site and identified the existing lease area by taking note of the eight boundary points demarcating the existing lease area. The latitudinal and longitudinal co-ordinates of all the boundary points were noted with the assistance of the Senior Geologist. The Senior Geologist opted to use his smart phone for that purpose since it was more accurate and functional as compared to the GPS equipment carried by him. This was demonstrated by the geologist in the presence of the parties. A copy of the lease plan containing the original latitudinal and longitudinal co-ordinates was obtained from the Senior Geologist and the same is submitted along with this report. The Senior Geologist mentioned that small variations within tolerance limits could be expected while measuring such co-ordinates, particularly since measurements were taken from closest proximity possible from the boundary points and not directly from the boundary points, due to unsafe and inaccessible site conditions. A copy of the lease plan with original co-ordinates and the co-ordinates recorded at site are annexed as **Annexure 5** and **Annexure-6** respectively.
- 6.2 It is submitted that the distances from the lease boundary to the houses of the Petitioners 1 to 4, as well as the four nearest houses pointed out by the parties were measured from the horizontal plinth as per the distance measurement conditions. The houses of the Petitioners 1 to 4 are depicted as P1, P2, P3, P4, and the four nearest houses are depicted as N1, N2, N3 and N4 respectively in the rough sketch prepared by the Advocate commissioner

(sketch No.1) produced as Annexure-7. The distance from the nearest mud road to the lease boundary (depicted as MR), the distance from the Panchayath road filled with soling stones (depicted as PRS), distance from the Public motorable tarred road to the lease boundary (depicted as PTR) were all measured and are depicted on the sketch No.1, accordingly.

- 6.3 Considering the nature of work and distances to be measured at the quarry site, the commission first measured the distances from the houses in the southern and south western portion marked as P2, N1, P4 and N2; as well as distance from panchayath road filled with stone soling, (depicted as PRS) and the mud road adjoining the quarry site (depicted as MR). Subsequently, the distances from the houses in the Northern and North eastern portions marked as P1, N2, N4 and P4 respectively, were measured. The distance from the Public motorable tarred Road (marked as PTR) to the quarry site was also measured.
- 6.4 It is submitted that photographs of the 8th Respondent's quarry indicating the depth of 8th Respondent's quarry, photographs of the boundary points depicting the mining lease boundary and photos to indicate distance measured as required by the parties were taken.
- 6.5 At the request of the counsel for the parties, additional points were also recorded while measuring the geological distance from the houses, nearest residential buildings and roads.
- 6.6 The measurement details using total station were downloaded by the Taluk Surveyor into his laptop, at the quarry site premises, after measuring the distances and the same were pointed out to the Advocate commissioner in the presence of parties/counsel. The taluk surveyor was also requested to connect the points and to provide a sketch, including measurements of the lease boundary taken during the commission using the total station, so that it can be submitted before the Hon'ble High Court and placed on record. A copy of the survey sketch prepared by the Taluk Surveyor is produced (sketch No.2) and placed on record as Annexure-8.
- 6.7 During site inspection, the Senior Geologist mentioned that quarrying is now being carried out in the northern and north eastern portions of the lease area. A copy of the lease plan demarcating the present area of quarrying operations in red, was also obtained from the Senior Geologist, since at the time of inspection, the quarrying activities had been stopped and the present area of quarrying operations had to be brought on record. A copy of the sketch (sketch No.3) is produced as Annexure-9. The Senior Geologist was

also requested to provide a rough sketch of the excess mined portion and the same is brought on record as sketch No.4. A copy of the sketch is produced as Annexure- 10

6.8 The above aspects have been incorporated in the rough sketch No.1 prepared by the Advocate commissioner. Sketch No.1, (Annexure 7).

6.9 All the relevant photographs taken by the photographer hired by the advocate commissioner during the commission are annexed at the end, separately as Annexure- 'X' series.

7. Objections raised by the parties and assistance sought from the Senior geologist in measuring distance:

7.1 During the commission, the 2nd petitioner mentioned that the distance from 2nd Petitioner's house had to be taken from the nearest quarried point, pointing to an area, a few metres inside the quarry protection wall, since as per the 2nd Petitioner, the 8th Respondent had conducted excessive mining operations upto that extent. The portion pointed out by the 2nd Petitioner was covered in mud with vegetation growing over it at the time of inspection.(Photograph X-44 at page 51 of the report). The 8th Respondent's manager showed a quarry lease plan of the year 1987-88 period and mentioned that areas outside the present lease plan were mined as per the earlier lease agreements and taking measurements from the points pointed out by the 2nd Petitioner, as if it was mined under the subsisting lease and was causing inconvenience, as alleged, was not correct. The counsel for the 8th Respondent also submitted that the commission cannot go beyond the original scope of the commission application, which was only to ascertain distance parameters based on the existing lease since the main case of the petitioners was that stones were pelted from quarry site due to ongoing mining operations and that the 'mining operations' in the work memo can only pertain to the present mining operations under the existing lease, which is under challenge in the writ petition. The 8th Respondent's counsel also pointed out that the advocate commissioner is not the technically or legally competent person to determine issues beyond the scope of the commission application. The counsel for the Petitioner pointed out that Petitioners have a specific case that 8th Respondent has carried out mining operations, over and above the existing lease plan and while measuring the 'mining operations,' distance must be taken from the excess mined portions as well.

7.2 In the above circumstances, taking into account the objections raised on behalf of the Petitioners and the 8th respondent, the advocate commissioner

sought the assistance from the senior geologist and requested to point out the excess mined portions, over and above, the existing mining lease plan. The Senior Geologist pointed to a curved portion along the north western portion and not the portion, as alleged by the 2nd Petitioner. Since this portion was centrally located, between BP 01 and BP 02 chainage it did not have any impact on the distance measurements. In the above circumstances, the Senior Geologist was also requested to provide a rough sketch of the excess mined portion and the same is brought on record as sketch No.4 as (Annexure- 10). The senior geologist also mentioned that the penalty for excess mining was paid. At the instance of counsel for the petitioner, the distance from the external protection compound wall, in the alleged excess quarrying portion as claimed by the 2nd Petitioner, has been measured as 29.5 mts. from the horizontal plinth of 2nd Petitioner's house and 25 mts. from the car porch. It is submitted that distance from no other points were pinpointed to be measured by the parties.

7.3 Additional point noted by the advocate commissioner:

During the commission, the Advocate commissioner had requested the parties to identify the nearest houses, so that the commission can be completed without much delay, before sundown. After taking measurements of all the houses, as reported, the 1st Petitioner pointed out that the distance from the house of one Mr. Sunil Kumar, north of house marked as N3, had to be measured. However, due to paucity of time, the advocate commissioner requested to limit to the nearest houses from the quarry only. The 1st Petitioner was also of the opinion that Sri. Damodaran's house (N3 in sketch No.1) was closest to the quarry site in the northern portion and therefore the measurement from Sunil Kumar's house was not taken. Distances from no other residential buildings were required to be specifically taken by the parties at the time of the commission.

8) Points to be noted and reported by the Advocate Commissioner as per the work memo and the commission application filed on behalf of the Petitioners:

In point nos. (vi) and (vii) in the work memo filed by the Petitioners' counsel, advocate commissioner is required to take photographs indicating depth of 8th Respondent's quarry and to take photographs of the fencing of the lease boundary, if any. The above matters are reported as follows:

Point No. (vi): Photographs X 1 to X6 taken indicating the depth of the quarry are produced at running pages 30 to 32 of the report.

Additional Points: The 2nd Respondent, Deputy Director of Mine's safety, pointed out that depth can be up to the boom of the excavators. Petitioner's counsel objected. The 2nd Respondent, Deputy Director of Mines Safety, pointed to some areas (as seen in Photo X-5 and X-6 at running page 32 of the report) to state that benching was visible in those areas where mining activities were being conducted and the same is recorded as requested by counsel for R8. The 8th Respondent's counsel also mentioned that these matters only relate to internal worker's safety and no complaints have been raised so far.

Point no. (vii): There are eight boundary points. There is no fencing interlinking any of the lease boundary points. The photographs of boundary points are produced as Photographs X-7 to X-14 (at running pages 33 to 36 of the report). There is an outer protection compound boundary wall around the quarry site and in some areas in the north eastern portions, fencing is seen provided.

8.2. Points (i) to (v) in the work memo filed by the Petitioners' counsel, the prayers sought for in the commission application I.A. No. 15083 of 2017 requiring distance measurements and photos and point No. 4 of 8th Respondent's work memo to record facts from nearest houses are reported as follows:

The distance from the mining operations undertaken by the 8th Respondent from the existing lease boundary, including the excess mined portion (depicted as E on sketch No.1), to the horizontal plinth of the houses and nearest roads were measured using total station and have been marked in sketch No.1, Annexure-7. The additional points to be noted at the request of the counsel for the parties were ascertained. The photographs indicating measurement of distance using total station and photographs of the outer boundary protection wall from the distance measured points, wherever visible, (since lease boundary was not visible from any measured point) have been taken. The above factual aspects are reported as follows:

(a) **Distance from 1st Petitioner's house, (P1 on sketch No.1-) : 109.6 mts.**

Inhabitants: 1st Petitioner, K.E. Shyju and family. (Photo X-15 at page 37 of the report.

(b) **Distance from 2nd Petitioner's house, (P2 on sketch No.1) : 63.0 mts.**

Inhabitants: 2nd Petitioner, Muhammed Rafi and family. The photographs indicating distance measured from the house are produced as photographs X-16 to X-18 (at pages 37 to 38 of the report).

Additional points noted at the request of the counsel for the 8th Respondent:

Copy of building permit was shown to the advocate commissioner. Building Permit is dated 12.09.2010. 2nd Petitioner mentioned that occupancy certificate was unavailable. The 2nd Petitioner informed that the construction of the house was completed and it was occupied in March 2012.

Additional points to be noted at the request of the counsel for the 2nd Petitioner:

The distance from the 8th Respondent's outer boundary to horizontal plinth is 29.6 mts. and distance from the car porch is around 25 mts.

(c) Distance from 3rd Petitioner's house, (P3 on sketch No.1) : 104.1 mts

Inhabitants: 3rd Petitioner, C.K. Balan and family. The photographs indicating distance measured from the house is produced as photographs X-19 and X-20 (at page 39 of the report).

Additional points noted at the request of the Petitioners' counsel:

3rd Petitioner, mentioned that the house was built in the year 1996-97 and that he is working as a coolie. Mr. Balan's brother is staying in a house adjacent to Balan's house. It is located within a proximity of 10-15 metres.

(d) Distance from 4th Petitioner's house, (P4 on sketch No.1,) : 127.5 mts.

Inhabitants: 4th Petitioner, Muhammed Shijas and family. The Photographs indicating distance measured from the house is produced as photographs X-21 and X-22. (at page 40 of the report).

(e) Distance from 1st nearest House, (N1 on sketch No.1) : 89.7 mts.

Inhabitants: Father of 2nd Petitioner, 2nd Petitioner's brother and 2nd Petitioner's grandmother. The photographs indicating distance measured from the house is produced as photographs X-23 and X-24 (at page 41 of the report). The photo taken from approach road to outer boundary is X-24.

Additional points noted at the request of the Petitioner's counsel:

The father of the 2nd Petitioner, Mr. Kunhiahmed mentioned that the house is an ancestral property and is nearly 90 years old. Father of 2nd Petitioner

imed that stones were pelted on the house during the quarrying operations.

Distance from the nearest House No.2, (N2 on sketch No.1) : 46.1 mts.

Inhabitants: Sri. Appukutty Parrakandi and family: The photographs indicating distance measured from the house is produced as photograph X-25 to X-27 (at pages 42 to 43 of the report). In Photo X-26, the outer boundary wall is visible vaguely in the background.

Additional points noted at the request of the counsel for the 8th Respondent:

Sri. Appukutty claimed that the house was built around 35 years back. He informed that he has no objections or complaints and has not faced any problems due to the mining operations being carried out by the 8th Respondent. He also mentioned that the present quarrying operations are being carried out in the north and northeast portions only.

(g) Distance from the nearest house No.3, (N3 on sketch No.1) : 60.9 mts

Inhabitants: Damodaran Mellepayilil: The photographs indicating distance measured from the house is produced as photograph X-28 to X-29 (at pages 43 to 44 of the report).

Additional points noted at the request of the counsel for the 8th Respondent:

Sri.Damodaran Mellepayilil is doing krishi work. He mentioned that he has no objections to the quarry operations being undertaken by the 8th Respondent and has not faced any disturbances due to the quarry operations.

Additional points noted at the request of counsel for the Petitioners:

Sri. Damodaran Mellepayilil's claims that house was built nearly 50 years back.

(h) Distance from the nearest house No.4, (N4 on sketch No.1) : 69 mts

Inhabitants: Brother of Damodaran Mellapayilil: Photographs indicating distance measured from the house is produced as photograph X-30 to X-31 (at pages 44 to 45 of the report).

(i) Shortest distance from the Mud road along the quarry

on the western and southern side (MR on sketch No.1) : 33.9 mts.

The Photographs indicating distance from the nearest road portion to the outer boundary wall is produced as photographs X-32 to X-34 (at pages 45

and 46 of the report). The entire road portion is not plotted on the taluk surveyor's sketch No.2 with accuracy, since station points were not required to be taken along the entire stretch of the road adjoining the south western boundary. But the shortest distance from the lease boundary wall to the road portion has been plotted and is measured as 33.9 mts., near the house of P2 (Photo X-33). Additional points relating to nature and ownership of the property as requested by counsel for the 8th Respondent are considered in para 9.

(j) Distance from the Panchayath road filled with stone soling (PRS on the sketch No.1): 58.5 mts.

The Photographs indicating distance measured from the Panchayath road is produced as photographs X-34 and X-35, (page 46 and 47). In photo X-34, the road MR branches out into the western direction where parties are gathered, from which point, the panchayath road starts and is depicted as PRS in sketch No.1. The other branch of the road continuing in the northern direction along the boundary is also depicted. The panchayath road is provided with stone soling as seen from X-35.

(k) Distance from the Public Motorable Tarred Road occurring on the North eastern portion marked as (PTR) on the sketch No.1: 77.5 mts.

Photographs indicating distance measured from the Public Motorable (tarred) road is produced as photograph X-36 (page 47). The outer protection compound wall of the quarry is not visible from this road.

9. Report of the Advocate commissioner as per the work memo filed by the 8th Respondent:

9.1 **Point No.1:** The survey sketch demarcating the present area of quarrying operations (as obtained from the senior geologist) as sought for under point No.1 of 8th Respondent's memo is produced as sketch no.3 of the commission report (Annexure-9). The said portion is marked in 'red' and the lease boundary points are identified as BP 01 to BP 08 and marked in yellow, on sketch No.1 prepared by the Advocate commissioner (Annexure-7).

9.2 **Point No.2:** Distance from the above demarcated area to the petitioners' house as required under point No.2 is as follows:

Distance assessed based on measurements available in the taluk surveyor's, survey sketch No.2 (Annexure-8), from the demarcated portion where quarrying operations are being conducted presently as marked out by R5,

senior geologist and incorporated in Advocate commissioner's survey sketch No.1 are reported as follows:

- (a) Distance from 1st Petitioner's house: In excess of 110 mts.
- (b) Distance from 2nd Petitioner's house: In excess of 150 mts.
- (c) Distance from 3rd Petitioner's house: In excess of 130 mts.
- (d) Distance from 4th Petitioner's house: In excess of 150 mts.

9.3 Point no.3 of the work memo filed by the 8th Respondent:

The owner of the the nearest house in the south western side, from the demarcated area of quarrying, Sri. Appukutty (depicted as N2 on the rough sketch) has no objections to the quarrying activities being carried out and has no complaints relating to mining operations.

The owner of the nearest house in the north eastern side (N3), Sri. Damodaran has no objections to the quarrying activities being carried out and has no complaints relating to mining operations

9.4 Point no. 4: The nature and title over the road adjoining the southern boundary:

- a) The nature of the road is depicted in the photographs X-32 to X-34 produced at pages 45-46. As seen from the photos it is a mud road. The Panchayath road with stone soling is depicted as PRS as seen from X-35 (p. 47). The nearby public motorable road which is tarred; is located on the north eastern portion, depicted as 'PTR' on sketch No. 1 as is indicated in Photographs X-36 and X-37(page 47-48).
- b) Regarding ownership of the road: The secretary of the Panchayath specifically mentioned to the advocate commissioner that such road portion marked as MR in sketch No.1 is not in the panchayath register. The 8th Respondent's quarry manager mentioned that the adjoining road in the southern portion of the outer protection wall is used for access to the quarry and is owned by the 8th Respondent. Records to prove title were also produced by the 8th Respondent. The 4th Petitioner mentioned that he had no records in his possession to prove title to the road but he claimed that some portion of his property is part of the road portion and that he and the public have been using the entire road portion for several years and is entitled to use the road, as if by way of easement. Since the advocate commissioner has no authority to determine ownership of the road, the above factual aspects are only noted for the purpose of the commission.

9.5 **Point no.5:** The rough sketch, along with the relevant particulars is produced as sketch No.1. (Annexure-7).

9.6 **Point no.6:** the counsel for the 8th respondent requested to note the presence of Mines Manager, Sri. S. Sajodathappa , Mines mate cum blaster, P. Ranagasamy and their presence is noted in the list of attendees produced as Annexure-2. The grievance raised by the mining, loading and unloading labourers gathered, informing that due to stoppage of quarrying operations, their only means of livelihood was being affected, which also resulted in them being unable to repay loans was noted, as requested at site.

10) **Distance summary:**

Distance measured from the existing lease boundary (including excess mined portion depicted as 'E' in sketch no.1), with the assistance of the Senior Geologist are reported as follows:

- (a) Distance from the 1st Petitioner's house, (P1 in sketch No.1): **109.6 mts.**
- (b) Distance from the 2nd Petitioner's house, (P2 in sketch No.1): **63.0 mts.**
- (c) Distance from the 3rd Petitioner's house, (P3 in sketch No.1): **104.1 mts**
- (d) Distance from the 4th Petitioner's house, (P4 in sketch No.1): **127.5 mts.**
- (e) Distance from the 1st nearest House, (N1 in sketch No.1): **89.7 mts.**
- (f) Distance from the nearest House No.2, (N2 in sketch No.1): **46.1 mts.**
- (g) Distance from the nearest house No.3, (N3 in sketch No.1): **60.9 mts**
- (h) Distance from the nearest house No.4, (N4 in sketch No.1): **69.7 mts**
- (i) Shortest distance from the road (MR in sketch No.1): **33.9 mts.**
- (j) Distance from the Panchayath road (PRS in sketch No.1): **58.5 mts.**
- (k) Distance from the Public Motorable Road occurring on the North eastern portion marked as (PTR) in sketch No.1: **77.5 mts.**

Distance from the demarcated mining operations area identified by the Senior Geologist in sketch No.1:

- (a) Distance from 1st Petitioner's house: **In excess of 110 mts.**
- (b) Distance from 2nd Petitioner's house: **In excess of 150 mts.**
- (c) Distance from 3rd Petitioner's house: **In excess of 130 mts.**
- (d) Distance from 4th Petitioner's house: **In excess of 150 mts.**

11) Few photos produced to depict site conditions: X-38 to X-46 (pgs. 48 to 52):

Photograph X-38 of the Advocate commissioner verifying with Geologist about the GPS equipment. Photographs X-39 to X-40 showing, the cross-verification of measurements with total station and tape measurement prior to taking distance measurements from BP 06 to BP 07, wherein distance using tape measurements was 24.75 mts. due to lack of proper accessibility whereas total station produced accurate reading of 25 mts. Photographs X-41 to X-43 are produced to show the hilly terrain, uneven ground and thick vegetation surrounding the quarry due to which the plotting of points by taluk surveyor was also rendered cumbersome and time consuming. Photograph X-44 is produced to indicate the area required to be measured from the house of 2nd Petitioner as the quarried point which was covered in mud with vegetation as mentioned in para 7 supra. It was informed by R-8's Manager and confirmed by R-6, Assistant Environmental Engineer that mud was dumped to provide green belt and the same was recorded at the request of counsel for the parties and is reflected in sketch No.1 (Annexure-7).

12) The Petitioners paid the amounts due to the commissioner as directed by the Hon'ble Court on 11.10.2017. The cost for the total station used to measure the distance, amounting to Rs. 9,000/- was borne by the Petitioners at site on 09.10.2017. The cost for the photographer amounting to Rs. 5,500/- was borne by the advocate commissioner. The copy of the bill is also furnished as Annexure 11-(a). The stationary expenses for preparation of the report are also annexed as Annexure- 11(b). It is submitted that the Taluk Surveyor and Geologist co-operated in providing necessary assistance in providing the sketches and relevant inputs for the commission purposes. The counsel for the parties also co-operated and ensured the commission was conducted, without any untoward incidents.

13) A short delay in submitting the commission report had occurred due to unavoidable circumstances, especially since inputs from Taluk Surveyor and the 5th Respondent Senior Geologist, were awaited and the delay may be kindly condoned. The inputs have been duly incorporated while preparing the commission report.

14) I am submitting this commission report as per the commission warrant and order of this Hon'ble court, with following annexures:

- (i) Notice of inspection issued to the parties : (Annexure-1)
- (ii) List of attendees present during the commission : (Annexure-2)
- (iii) Work memo filed by counsel for the Petitioners : (Annexure-3)

- (iv) Work memo filed by counsel for the 8th Respondent : (Annexure-4)
- (v) Survey plan with original co-ordinates obtained from the geologist : (Annexure-5)
- (vi) Latitudinal and longitudinal co-ordinates recorded and signed by the Senior geologist at site : (Annexure-6)
- (vii) Rough sketch prepared by the Advocate commissioner (Sketch no.1) : (Annexure-7)
- (viii) Survey sketch prepared by the Taluk surveyor (Sketch No.2) : (Annexure-8)
- (ix) Sketch prepared by R5, indicating present mining area (sketch no.3) : (Annexure-9)
- (x) Sketch prepared by R5, indicating excess mined area (sketch no.4) : (Annexure-10)
- (xi) Relevant photographs in relation to the commission :(Annex.- 'X' series)
- (xii) Bills showing expenses incurred for photographer And stationery : (Annexure-11(a) &(b))

Dated this the 2nd day of November, 2017

Sdt-
RAHUL VARGHESE
ADVOCATE COMMSSIONER

TRUE COPY

Rahul
ADVOCATE

RAHUL VARGHESE
ADVOCATE

46/3589, ADAPPALLY ROAD, VENNALA,
KOCHI - 682 028, KERALA

TEL: (0484) 2806311, 2805126
E-mail: rahulvarghese@gmail.com

Sub:- Order dated 25.09.2017 of the Hon'ble High Court of Kerala in I.A. No. 15083/2017 in W.P.(C) No. 21713/2017(L)

To

Petitioners:

- 1) Shyju K.E., aged 40 years, S/o. Mukundan K.E.,
residing at Kunnumal, Edathil House, Iyyad P.O.,
Unnikulam Via, Kozhikode - 673 574.
- 2) Muhammed Rafi, aged 42 years, S/o. Kunhammed Haji,
residing at Malayil Veedu, Iyyad P.O.,
Unnikulam Via, Kozhikode - 673 574.
- 3) Balan C.K., aged 60 years, S/o. Appukutty,
residing at Chettiankandi Veedu, Iyyad P.O.,
Unnikulam Via, Kozhikode - 673 574.
- 4) Muhammed Shijas, aged 29 years, S/o. Abdurahiman Master,
residing at Vengalathu Veedu, Iyyad P.O.,
Unnikulam Via, Kozhikode - 673 574.

Through Advocates Sri. Rajan Vishnuraj and Sri. Harish Vasudevan

Respondents:

- 1) State of Kerala represented by the Additional Chief Secretary,
Department of Industries, Secretariat, Thiruvananthapuram - 695 001.
- 2) Deputy Director General, Directorate of Mines Safety,
Southern Zone, Bengaluru - 560 029.
- 3) The Director of Mining and Geology, Directorate of Mining and
Geology, Kesavadasapuram, Pattom P.O., Thiruvananthapuram - 695 004.

Copy Received
Adv. Harish Vasudevan
4/10/17

Copy of the Notice Received.
9/10/17
Adv. Harish Vasudevan

Copy Received
4/10/17

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4.10.17
Adv. Dhishabandhan

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4/10
Adv. T.V. VINU, ChC

Received copy
C/o Adv. T. Vinu
(Ex - 2136)
4/10/17

- 4) The District Collector, Kozhikode, Civil Station, Kozhikode District - 673 001.
- 5) The Geologist, District Office, Department of Mining and Geology, Kozhikode - 673 001.
- 6) Environmental Engineer, Kerala State Pollution Control Board, District Office, Kozhikode - 673 002.
- 7) Unnikulam Grama Panchayat, Ekarool, Kozhikode, represented by its Secretary.
- 8) Geo Enterprises Quarrying Unit, Iyyad P.O., Unnikulam Via, Koyilani, Kozhikode - 673 574, represented by its Managing Partner, E. Indira.

✓ R1, R3 to R5 through the Government Pleader

R2 through Sri. T.V. Vinu, Central Government Counsel

R6 through Sri. T. Naveen, Standing Counsel

R7 through Sri. T. Shihabudheen, Advocate

R8 through Sri. Millu Dandapani, Advocate

Please take notice that:

1) I have been appointed as Advocate Commissioner *vide* order of the Hon'ble High Court of Kerala in I.A. No. 15083 of 2017 in Writ Petition (C) No. 21713 of 2017. A true copy of the commission warrant (excluding enclosures) and the order of the Hon'ble Court are annexed as Annexure-I and Annexure-II, respectively.

2) As per the commission warrant (Annexure-1), the report has to be submitted on or before 13.10.2017. Accordingly, after consulting with the respective counsel of all parties concerned, the inspection of the quarry site for the commission purpose, has been fixed on 9th October, 2017 at 10.30 AM. The learned counsel are requested to ensure that their respective parties are present at the quarry site at 10.30 A.M on 09.10.2017.

3) As per the order of the Hon'ble Court, the 5th respondent, the Geologist, District Office, Department of Mining and Geology, Kozhikode, has been directed to render necessary assistance to the Advocate Commissioner. During the brief interaction with the geologist on 03.10.2017 about the mode of measurement and availability of personnel, it was informed that the GPS equipment now available with office of 5th Respondent is not fully functional. He suggested that the Tahsildar/Taluk Surveyor has all equipments

Respectfully

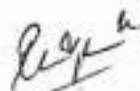
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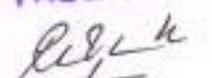
necessary for the purpose. In the above circumstances, since the date of the commission is fixed in consultation with the learned counsel for the parties, proper equipment and personnel are necessary for the conduct of the commission. Therefore, the learned Government Pleader appearing in this case is requested to take effective steps, with the intervention of the District Collector, Kozhikode, the 4th respondent, if required, to ensure the presence of the Geologist, Tahsildar and/or Taluk Surveyor with necessary equipment and personnel for measurement.

4) In furtherance to the above, any work memos, either from the Petitioners' side or from the 8th Respondent's side, if any, may be submitted sufficiently earlier.

Dated this the 4th day of October 2017.



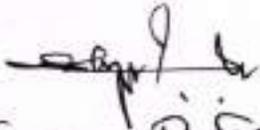
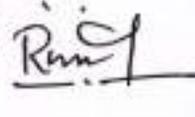
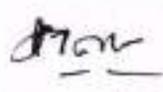
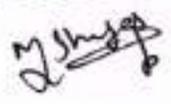
Adv. Rahul Varghese
Advocate Commissioner

TRUE COPY

ADVOCATE

LIST OF ATTENDEES PRESENT DURING THE COMMISSION DT. 09.10.2017:

As per order dated 25.09.2017 of the Hon'ble High Court of Kerala in I.A. No. 15083/2017 in W.P.(C) No. 21713/2017(L)

FOR PETITIONERS:-

- ①. SHYJU.K.E. 
- ②. Muhammed Rafi.m. 
- ③. C.H. Babu 
- ④. Mohammed Shijas. M 

Counsel for Petitioners: RAJAN VISWAS 

FOR RESPONDENTS:

②. Ramesh. Walikar,
Deputy Director of mines safety
& D.G.M.S. ~~at~~,
Southern zone, Bangalore.


09.10.17

FOR R5 - T. Mohanan, Senior Geologist
District Office of Mining & Geology
Kozhikode



FOR R6: K.A. Mukundhan, Asst. Environmental Engineer
Kerala State Pollution Control Board
District office, Kozhikode

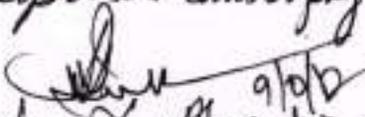


Taluk Surveyor - Rijilish k
Taluk Surveyor
Thamara ssy.


9/10/17

FOR R7:- K.P. Balan. Surveyor, ~~at~~ 
9/10/17

FOR R8:- Geo enterprises Emerging Unit. Aravindakshan 
9/10/17


ACh. Koster S, President
Council representing SA Repudat

-19-

Owner's/Occupants of nearest houses:-

- ①. 2nd Petitioner's father:- Kunahmed F/o P2 road, his brother & family.
Kunhammed :- ~~_____~~
(Southwest portion)
(Southern side)
- ②. Appukutty Pallakandi :- ~~_____~~ 9/10/17
and family (Southwest portion).
- ③. Damodaran Mellepoyilil :- ~~_____~~ 9/10/17
Aged 50 yrs =

Mines Manager:-

S. SAJODATHAPPA :- ~~_____~~

MINES MATE CUM BLASTER

P. RANGASAMY :- P. Rangasamy

ABILASH (PHOTOGRAPHER) :- ~~_____~~ 09/11/17

TRUE COPY

~~_____~~
ADVOCATE

-20-

ANNEXURE -3

BEFORE THE HON'BLE HIGH COURT OF KERALA

I.A No. _____ of 2017
in

W.P (C) No. 21713 of 2017

SHYJU K.E & ORS : PETITIONERS
Versus
STATE OF KERALA & ORS : RESPONDENTS

WORK MEMO SUBMITTED ON BEHALF OF THE PETITIONERS
BEFORE THE ADVOCATE COMMISSIONER

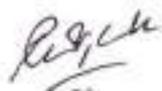
- (i) Inspect and measure the distance from the outer wall of the petitioners' residential buildings to the outer boundary where the 8th respondent has conducted mining operations.
- (ii) Inspect and measure the distance from the outer wall of the nearest residential houses/ buildings to the outer boundary where the 8th respondent has conducted mining operations.
- (iii) Inspect and measure the distance from the nearest road/ pathway to the outer boundary where the 8th respondent has conducted mining operations.
- (iv) Inspect and measure the distance from the 8th respondent's mining lease boundary to the petitioners' houses, nearest road/ pathway.
- (v) Take photographs indicating distance from the area where the 8th respondent has conducted quarrying operations to the nearest residential building and pathway/ road.
- (vi) Take photographs indicating the depth of the 8th respondent's quarry.
- (vii) Take photograph of the fencing of boundary of mining lease, if any.

Dated this the 7th day of October, 2017



Counsel for the petitioners

Received on 9/10/17
at site at 10:25 AM.



- 21 -

Filed on:

BEFORE THE HON'BLE HIGH COURT OF KERALA

I.A No. _____ of 2017
in

W.P (C) No. 21713 of 2017

SHYJU K.E & ORS : PETITIONERS

Versus

STATE OF KERALA & ORS : RESPONDENTS

**WORK MEMO SUBMITTED ON BEHALF OF THE PETITIONERS
BEFORE THE ADVOCATE COMMISSIONER**

RAJAN VISHNURAJ (R-1268)
HARISH VASUDEVAN (H-253)

Counsel for the petitioners

Amicus Advocates

2nd floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi - 18

TRUE COPY

Rajesh
ADVOCATE

- 22 -

ANNEXURE-4

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**W.P.(C) No. 21713 of 2017 - L**

Shyju K.E. and others : Petitioners

Vs.

State of Kerala and others : Respondents

WORK MEMO FILED BY COUNSEL FOR THE 8TH RESPONDENT

By virtue of order dtd. 25.09.2017, the Hon'ble High Court has allowed I.A. No. 15083/17 (commission application) and further directed that the 8th Respondent is permitted to submit work memo to the Advocate Commissioner, if so advised, and if the 8th Respondent submits Work Memo to the Advocate Commissioner, the facts in terms of the said work memo shall also be ascertained and reported by the Advocate Commissioner. The present work memo is submitted in accordance with the above direction for ascertaining the following facts:

1. To ascertain, demarcate and report the present area in which quarrying/mining operations are conducted. Also ascertain and report the lie and nature of the quarry specifically reporting to its boundaries as well as the above said demarcated area.
2. To ascertain and report the distance from the above demarcated area of quarrying/mining operations to Petitioner's house.
3. To ascertain and report as to whether the owner of the nearest house has any complaints about the quarrying operations so as to measure the distance from the quarrying/mining operations to his/her house.
4. To ascertain the nature of the nearby road and the verify its ownership. Also ascertain which is the nearby public road?
5. To prepare a rough sketch showing the lease area, area demarcated in which quarrying operations are conducted ascertained as per point no.(1), Petitioner's house, private road belonging to the 8th Respondent and the public road (if any) specifically marking the distance measured.
6. Any other matters that may be requested by the 8th Respondent or their counsel at the time of inspection.

Dated this the 7th day of October, 2017

Counsel for the 8th Respondent.

Received
on 7/10/17 at site
10:25 AM.
[Signature]

- 23 -

Presented On: 07.10.2017

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) No. 21713 of 2017 - L

Shyju K.E. and others : Petitioners

Vs.

State of Kerala and others : Respondents

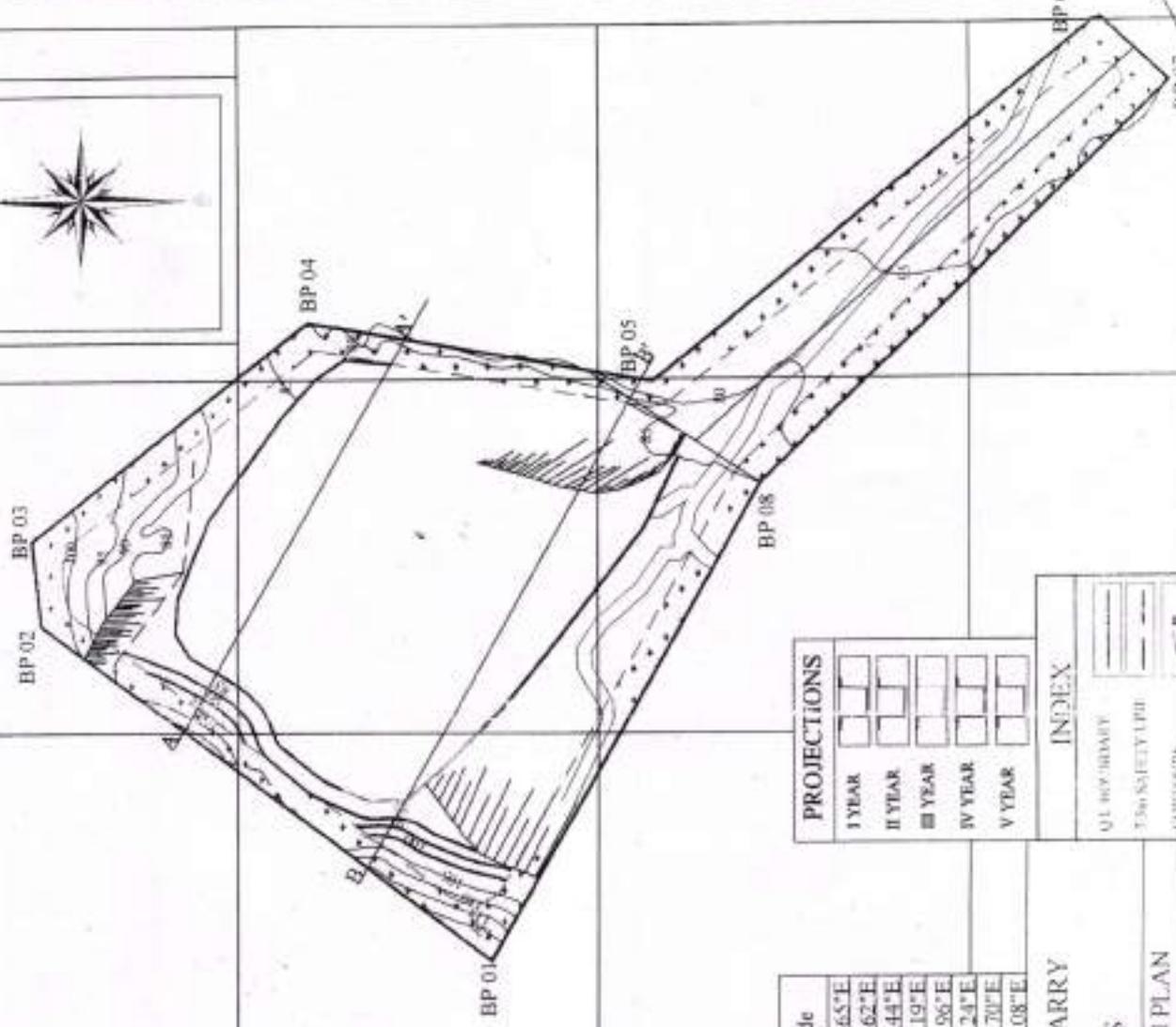
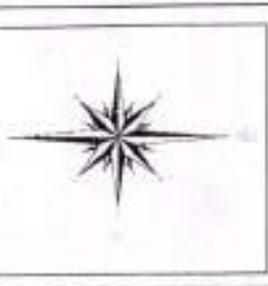
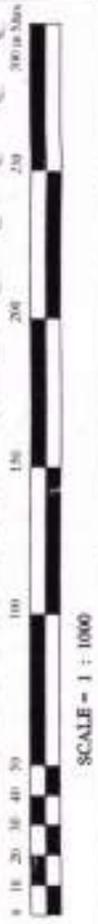
WORK MEMO FILED BY COUNSEL FOR THE 8TH RESPONDENT

COUNSEL FOR THE 8TH RESPONDENT

TRUE COPY
[Signature]
ADVOCATE

-24-

ANNEXURE - 5



PROJECTIONS	
1 YEAR	
II YEAR	
III YEAR	
IV YEAR	
V YEAR	

INDEX	
	Q1 BOUNDARY
	7.5m SAFETY STRIP
	CONTOURS
	MINING WORKINGS
	SERVICE ROAD
	OPEN BELT

Boundary Pillar Points no	Latitude	Longitude
BP 01	11°24' 38.43"N	75° 51' 13.65"E
BP 02	11°24' 42.53"N	75° 51' 16.62"E
BP 03	11°24' 42.62"N	75° 51' 17.44"E
BP 04	11°24' 39.02"N	75° 51' 19.19"E
BP 05	11°24' 37.02"N	75° 51' 18.96"E
BP 06	11°24' 33.12"N	75° 51' 22.24"E
BP 07	11°24' 32.45"N	75° 51' 21.70"E
BP 08	11°24' 36.02"N	75° 51' 18.08"E

BUILDING STONE QUARRY
OF
GEO ENTERPRISES
FIVE YEAR PRODUCTION PLAN

EXTENT - 2.6765 Ha SV No - 29/09
VILLAGE - SIVAPURAM TALUK - THAMARASSERY
DISTRICT - KODIHIKODE STATE - KERALA
SCALE - 1:1000 DATE OF SY - 09-10-2015

(Signature)

MAHESH S.
M.Tech in Applied Geology
Date: 09-10-2015

TRUE COPY
(Signature)
ADVOCATE

-25-

ANNEXURE-6

| CO-ORDINATES TAKEN AT SITE |

BPO1 = $11^{\circ}24'38''.20$ Sec N
 $75^{\circ}51'13''.19$ Sec E

BPO2 = $11^{\circ}24'42''.69$ Sec N
 $75^{\circ}51'15''.95$ Sec E

BPO3 = $11^{\circ}25'42''.61$ Sec N
 $75^{\circ}51'16''.89$ Sec E

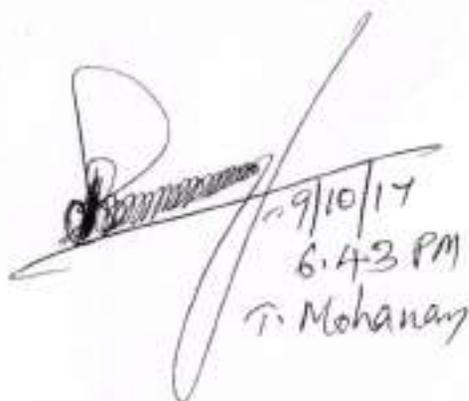
BPO4 = $11^{\circ}24'40''.53$ Sec N
 $75^{\circ}51'19''.95$ Sec E

BPO5 = $11^{\circ}24'37''.20$ Sec N
 $75^{\circ}51'18''.85$ Sec E

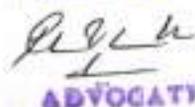
BPO6 = $11^{\circ}24'33''.38$ Sec N
 $75^{\circ}51'21''.96$ Sec E

BPO7 = $11^{\circ}24'32''.72$ Sec N
 $75^{\circ}51'21''.56$ Sec E

BPO8 = $11^{\circ}24'37''.03$ Sec N
 $75^{\circ}51'18''.60$ Sec E


 9/10/17
 6:43 PM
 T. Mohanay

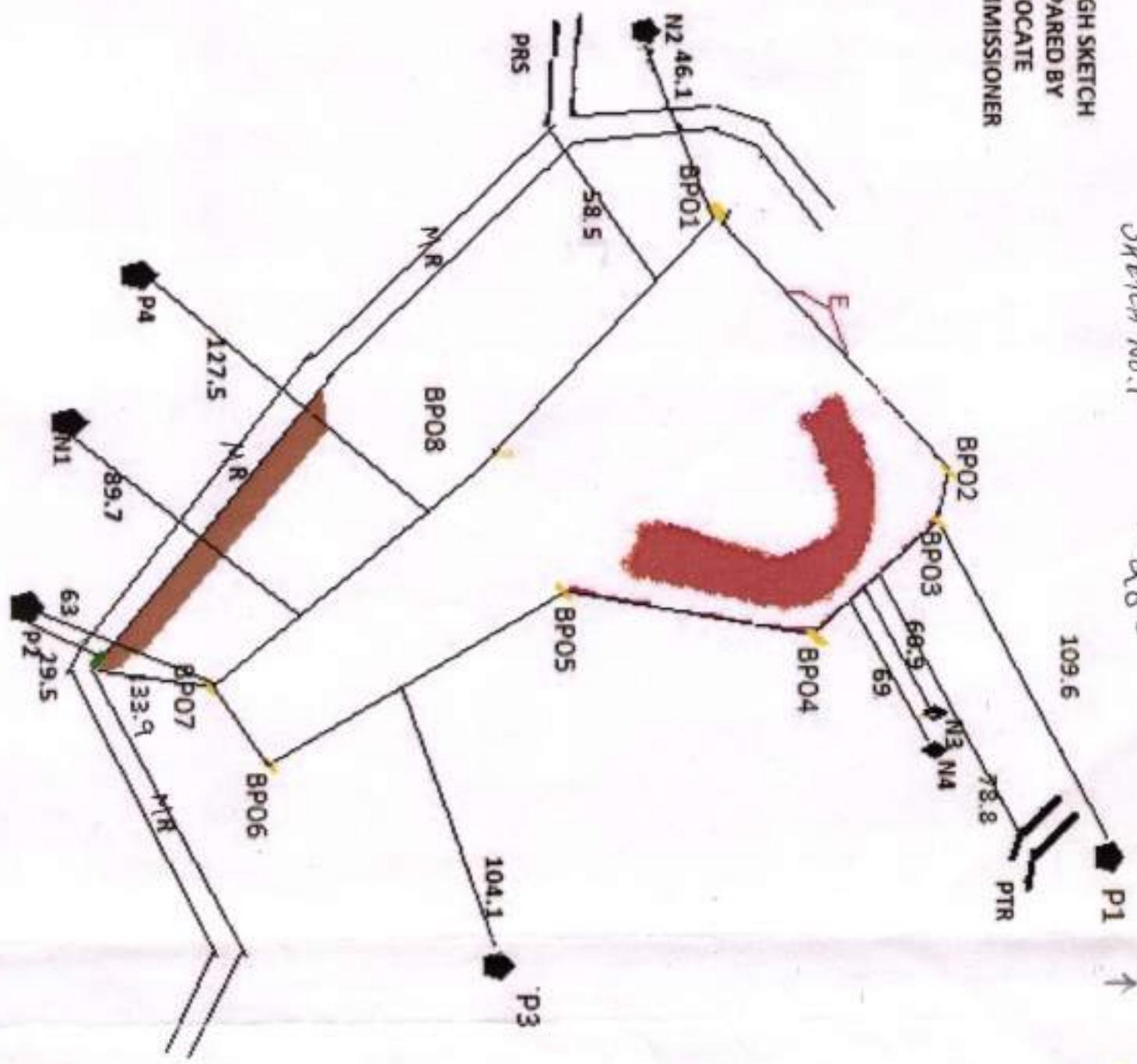
TRUE COPY


 ADVOCATE

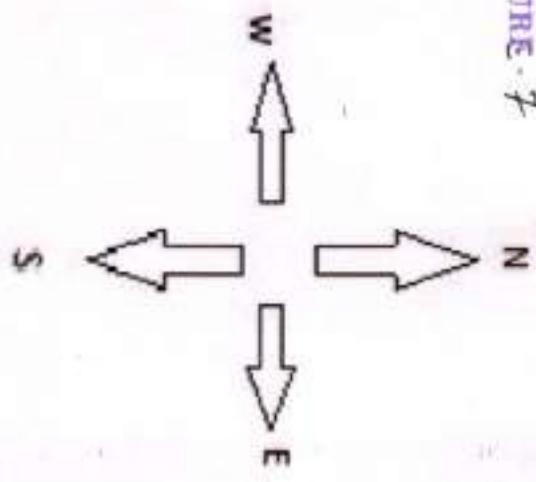
ROUGH SKETCH
PREPARED BY
ADVOCATE
COMMISSIONER

Sketch No.1

-26-



ANNEXURE - 7



DISTANCE IN METRES

- PRESENT MINING OPERATIONS
- MUD DUMPED BY R8
- BP- LEASE BOUNDARY POINTS
- P- PETITIONERS' HOUSE
- MR - MUD ROAD
- N - NEAREST HOUSES
- PRS - PANCHAYATH ROAD WITH STONE SOLING
- PTR- PUBLIC MOTORABLE TAR ROAD
- EXTERNAL BOUNDARY PROTECTION WALL
- EXCESS MINED

TRUE COP,
[Signature]
 ADVOCATE

- 27 -

Sketch No. 2

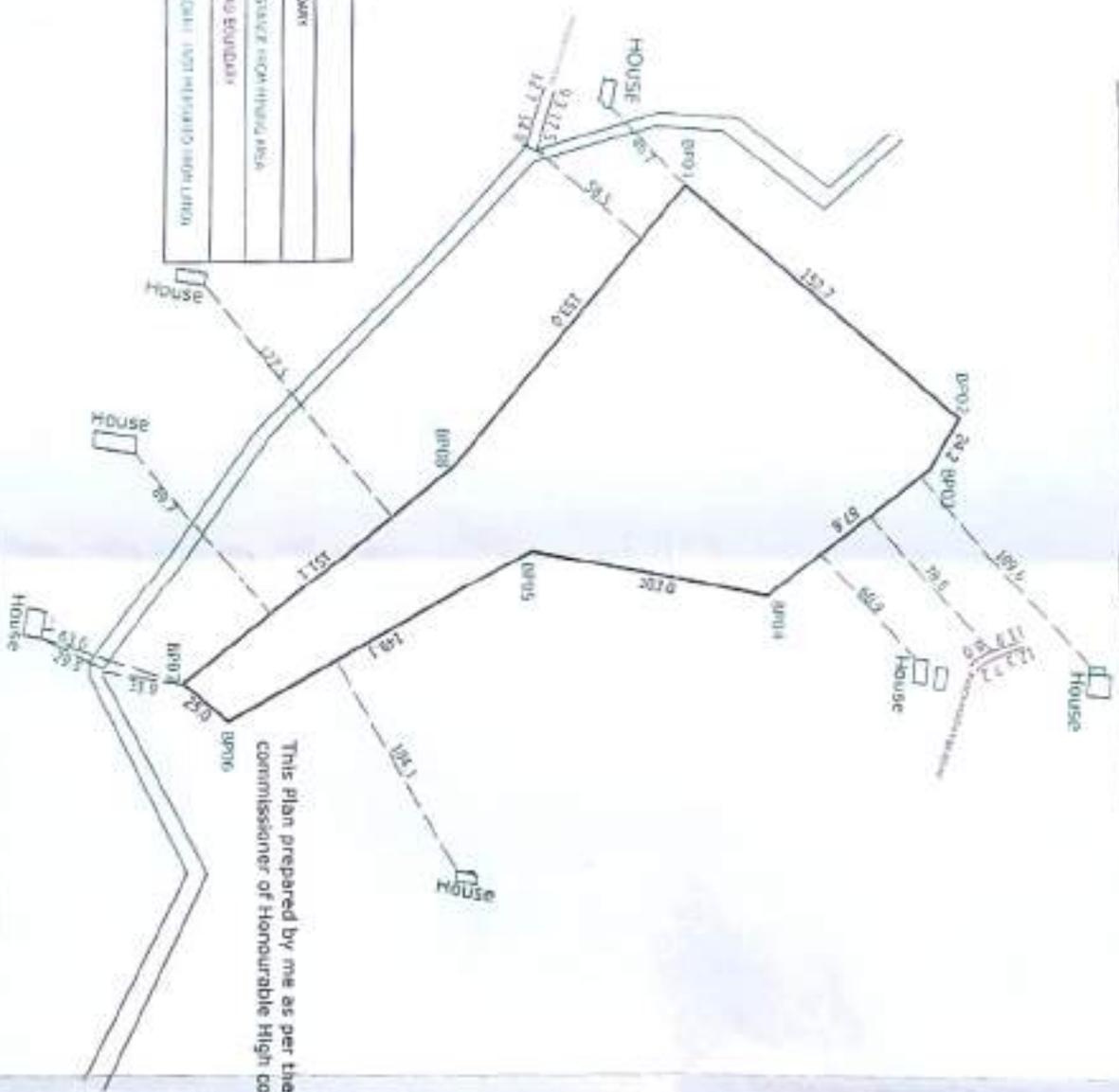
BEFOR THE HONOURABLE HIGH COURT - KERALA

SITE PLAN OF GEO ENTERPRISES QUARRYING UNIT IWYAD

DISTRICT : KOZHIKODE
 TALUK : THAMARASSERY
 VILLAGE : SIVAPURAM
 DESOM : VIRYAMBARAM
 RE SY NO : 29

LEGEND

—————	POSTING STATE BOUNDARY
—————	GRANTEE HOUSE & CONSUMER SOCIETY HOUSE AREA
—————	ENTRANCE TO QUARRYING UNIT
—————	ENTRANCE TO STATE BOUNDARY



This plan prepared by me as per the direction given by Advocate Commissioner of Honourable High Court of Kerala

ANNEXTURE - 8



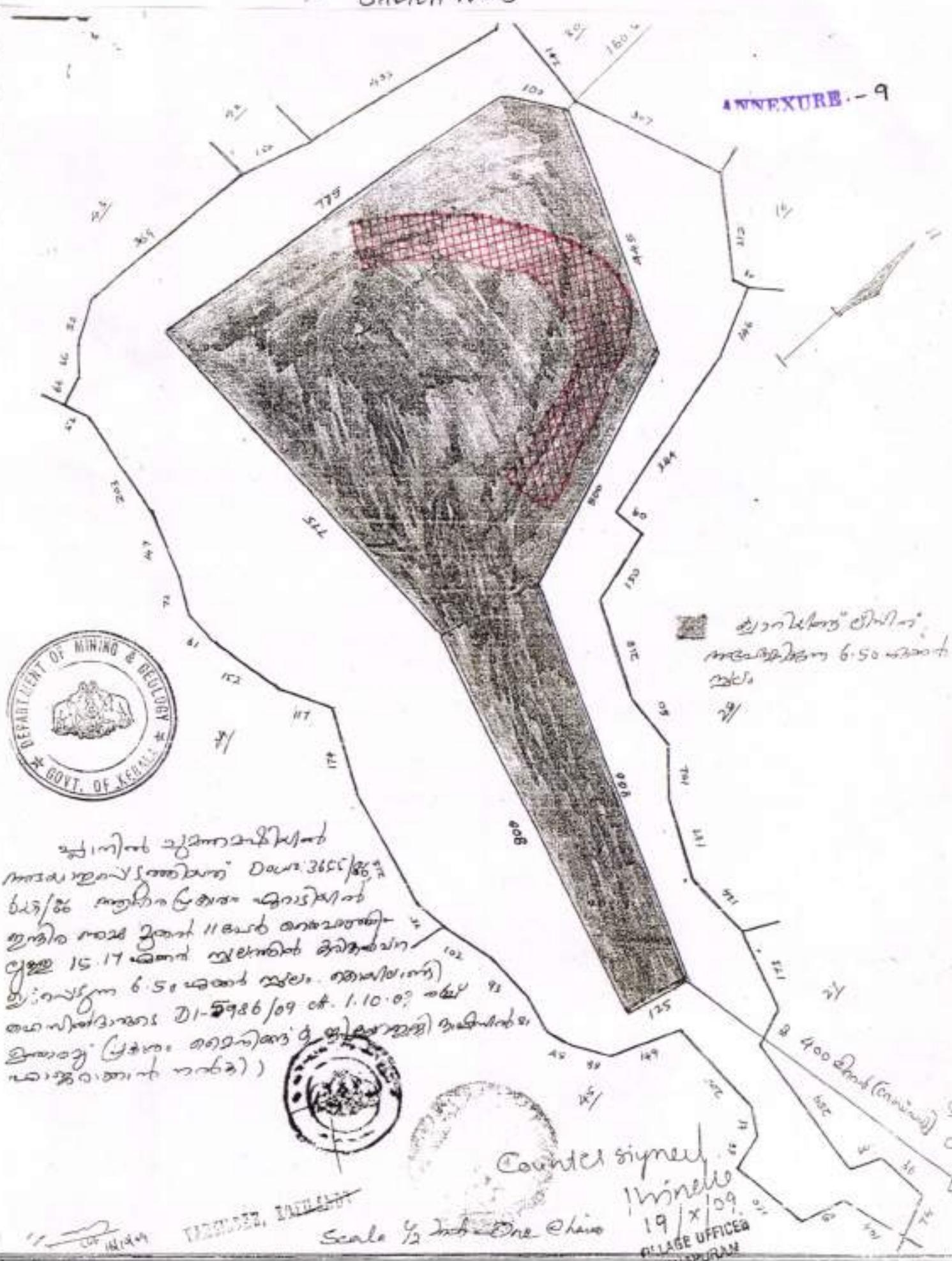
Thaluk Surveyor
 Thamarassery

TRUE COPY
[Signature]
 ADVOCATE

-28-

SKETCH NO.3

ANNEXURE - 9



ചിത്രം ചിത്രത്തിൽ
 അടങ്ങിയ സ്ഥലങ്ങൾ D.No. 3655/86
 625/86 നമ്പർ പ്രകാരം ഏറ്റെടുത്ത
 ഇടത്ത് 11 ഹെക്ടർ അളവുള്ള
 15.17 ഹെക്ടർ നിലയിൽ ഉൾപ്പെടുന്ന
 6.50 ഹെക്ടർ നില. തൊഴിലിന്
 അനുബന്ധമായി 21-5986/09 ഓ. 1.10.07 ന്
 ഉണ്ടായ (പുതിയ തൊഴിലിന് ഉപയോഗിക്കാൻ
 അനുബന്ധമായി)

ചിത്രത്തിൽ ചിത്രം
 അളവ് 6.50 ഹെക്ടർ
 നില
 2/

11/11/09
 11/11/09

T. DIVAKARAN

Scale 1/2 Inch = One Chain

Countersigned
 19/11/09
 VILLAGE OFFICER
 SIVAPURAM

True copy
 Attested.
 T. Divakaran
 V. DIVAKARAN

TRUE COPY
 Advocate

- 29 -

SKETCH NO 4



Handwritten notes in Malayalam script, including dates and measurements. One note mentions '11/51' and another mentions '19/86'. There are also some numbers like '11.51' and '11.09'.



Counted signed
 19/10/09
 VILLAGE OFFICER
 SIVAPURAN

Scale 1/2 inch = 100 feet

Excess extraction area
 reach sketch not
 in scale

True copy
 Attested

TRUE COPY

P. V. K.
 ADVOCATE

PHOTOGRAPHS TAKEN TO INDICATE THE DEPTHS OF PORTIONS OF THE QUARRY AS REQUIRED BY THE COUNSEL FOR THE PETITIONERS IN THE WORK MEMO:



Photograph X-1

Photo taken from area between Boundary Point (BP) 07 and BP 08 depicted in sketch No.1 facing northward



Photograph X-2

Photo taken from area between BP 08 and BP 07 chainage depicted in sketch No.1

TRUE COPY
[Signature]
ADVOCATE



Photograph X-3

Photo taken from close to BP 08 depicted in sketch No.1



Photograph X-4

Photo taken from close to BP 08 depicted in sketch No.1, towards north eastern side

TRUE COPY
[Signature]
ADVOCATE



Photograph X-5

Photo taken from near BP 08 on sketch no.1 towards north eastern direction



Photograph X-6

Photo taken from near BP 05 on sketch No.1 facing eastward

TRUE COPY
[Signature]
ADVOCATE

BOUNDARY POINTS ARE SEEN MARKED WITH YELLOW POSTS:



Photograph X-7

Boundary Point denoted as BP 08 on sketch No.1



Photograph X-8

Boundary Point denoted as BP 07 in sketch No.1

TRUE COPY
[Signature]
ADVOCATE



Photograph X-9

Boundary point denoted as BP 06 in sketch No.1



Photograph X-10

Boundary point denoted as BP 05 in sketch No.1

TRUE COPY
[Signature]
ADVOCATE



Photograph X-11

Boundary point denoted as BP 04 in sketch No.1



Photograph X-12

Boundary point denoted as BP 03 in sketch No.1

TRUE COPY
[Signature]
ADVOCATE



Photograph X-13

Boundary Point denoted as BP 02 on the sketch No.1



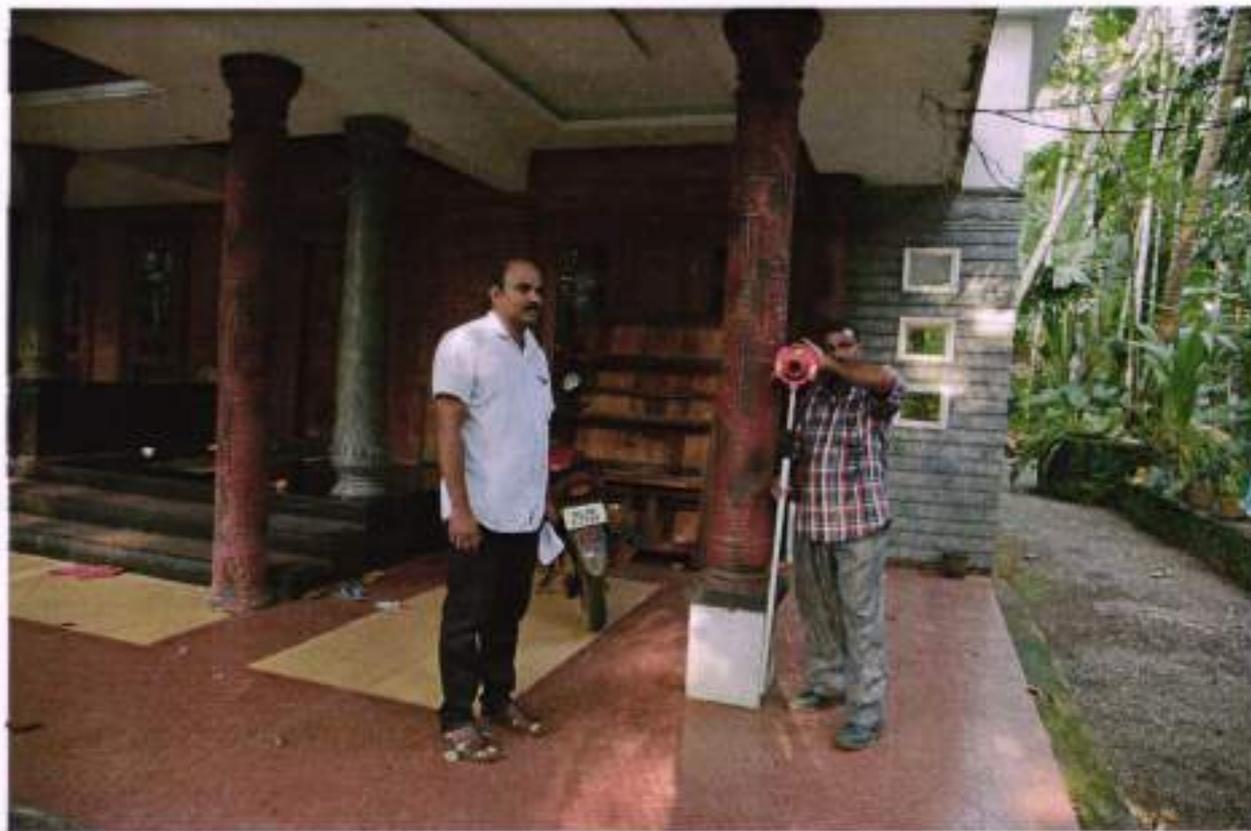
Photograph X-14

Boundary Point denoted as BP 01

TRUE COPY
R. Y. K.
ADVOCATE

-37-

Measurement of distance from 1st petitioner's house using total station depicted as P1 in the sketch No.3



Photograph X-15

Depicted as P1 in survey sketch No.1

PHOTOS TAKEN FROM THE HOUSE OF THE 2ND PETITIONER:



Photograph X-16

Taken from house depicted as P2 on sketch No.1

TRUE COPY
[Signature]
 ADVOCATE

-38-



Photograph X-17

Photo taken from outside car porch of house depicted as P2 in sketch No.1 facing towards quarry external protection boundary wall



Photograph X-18

Photo taken in front of P2's house.

TRUE COPY
[Signature]
 & ADVOCATE

-39-

PHOTOSTAKEN FROM THE HOUSE OF THE 3RD PETITIONER DENOTED AS (P3) ON SKETCH NO.1:



Photograph X-19

Photo taken at the house of the 3rd Petitioner depicted as P3 in sketch No.1, the 3rd Petitioner is also seen



Photograph X- 20

Photo taken from rear side of house depicted as P3 on the sketch no.1

TRUE COPY
[Signature]
 ADVOCATE

PHOTOS TAKEN FROM THE HOUSE OF THE 4TH PETITIONER (P4 ON THE SKETCH NO. 1):



(Photograph No. X-21)

Photo taken at the house of 4th Petitioner P4 on sketch No.1



Photograph No. X-22 Photo taken from outside the house of 4th petitioner towards the outer protection wall of quarry

TRUE COPY
[Signature]
 ADVOCATE

PHOTOS TAKEN FROM THE NEAREST HOUSE DEPICTED AS N1 ON SKETCH

NO.1:



(Photograph No. 23)

Photo taken from the nearest house no.1, depicted as N1 on the sketch No.1



Photograph X-24

Photo taken from the near the landing where nearest house no.1 depicted as N1 in sketch No.1.

TRUE COPY
[Signature]
 ADVOCATE

-42-

PHOTOS TAKEN FROM THE NEAREST HOUSE DEPICTED AS N2 ON THE SKETCH NO.1:



Photograph X-25

Photo taken from the nearest house no.2, depicted as N2 on the sketch No.1



Photograph X-26

The photo taken from outside the house of N2 as depicted in sketch No.1

TRUE COPY
[Signature]
ADVOCATE



Photograph X-27

Photo taken from house of N2 as depicted in sketch No.1.

PHOTOS TAKEN FROM THE NEAREST HOUSE NO.3 DEPICTED AS N3 ON SKETCH NO.1:



Photograph X- 28

Photo taken from outside the nearest house no.3 depicted as N3 in sketch No.1

-44-



Photograph X-29

Photo taken from house of N3 on sketch no.1

PHOTOS TAKEN FROM THE NEAREST HOUSE MARKED AS N4 ON SKETCH NO.1:

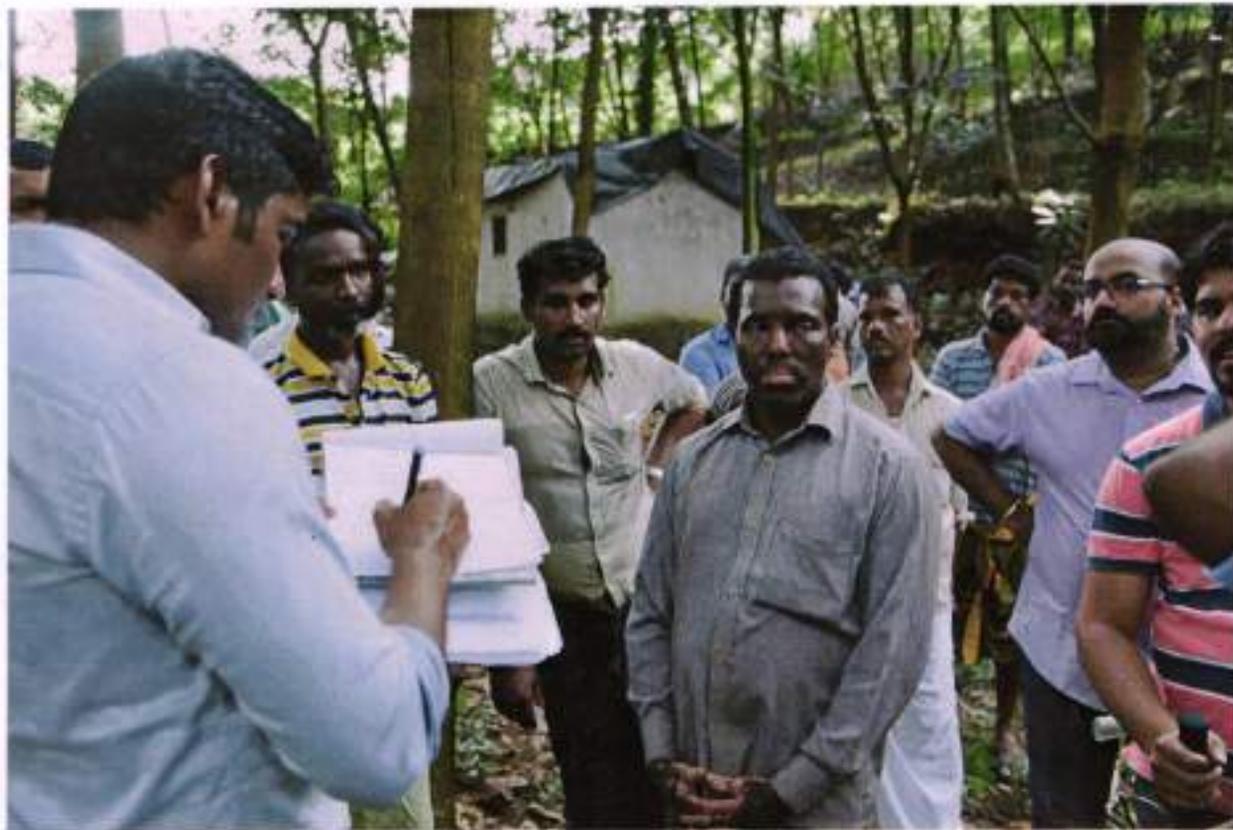


Photograph X-30

This house is located (adjacent to N3) depicted as N4 in sketch No.1

TRUE COPY
[Signature]
 ADVOCATE

- 45 -



Photograph X-31

Photo taken from behind houses depicted as N3 and N4 on sketch No.1 facing towards quarry area but fencing is not visible.

PHOTOS TAKEN OF THE ROAD PORTION CLAIMED BY 8TH RESPONDENT AS ITS' OWN PRIVATE ROAD DEPICTED AS R IN THE SKETCH NO.1.

MR



Photograph X-32

The photo is taken along the south western road portion depicted as MR in sketch No.1 and is adjoining the outer protection boundary wall.

-46-



Photograph X-33



Photograph X-34

Photo taken from the road portion depicted as MR in the sketch No.1.

TRUE COPY
[Signature]
ADVOCATE



Photograph X-35

Photo taken from Panchayath road filled with stone soling (PRS) on sketch No.1 on way to house N2.

PHOTOS TAKEN FROM THE PUBLIC MOTORABLE TARRED ROAD LOCATED IN THE NORTH EASTERN PORTION DENOTED AS (PTR) ON SKETCH NO.1.



Photograph X- 36

Photo taken from the tar road facing towards the quarry, depicted as PTR in the sketch No.1.

- 48 -



(Photograph X-37)

Photo taken from Public Motorable tar road portion depicted as PTR in sketch No.1.

FOR
PHOTOS TAKEN BY THE ADVOCATE COMMISSION:



(Photograph X-38)

TRUE COPY
[Signature]
ADVOCATE



(Photograph X-39)

Photo taken showing taking of measurement from BP 06 to BP 07 using total station



(Photograph X-40)

Photo taken showing measurement from BP 06 to BP 08 using tape measurement

TRUE COPY
[Signature]
ADVOCATE



(Photograph X-41)

Photo taken alongside the northeastern of the quarry, extremely hilly terrain.



(Photograph X-42)

Photo taken from close to Public Motorable road (PMR) on sketch no.3 facing quarry.

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[Signature]
ADVOCATE



(Photograph X- 43)

Photo taken from the area between houses marked as N1 and P4.



(Photograph X-44)

Photo taken from inside the outer protection boundary, facing the house of
2nd Petitioner (P2)

TRUE COPY
[Signature]
ADVOCATE



Photograph X-45

Photo taken at quarry site premises of 8th Respondent



Photograph X-46

Photo taken at quarry site premises of 8th Respondent

TRUE COPY
[Signature]
 ADVOCATE

- 53 -

ANNEXURE - 11(a)

ORDER FORM
CASH BILLMob: 9995345783
9895164383**MC's Digital Studio**

ERANJIPALAM JUNCTION, KOZHIKODE

No.

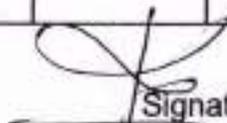
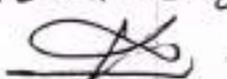
2635

Date

09/10/2017

To.....

Size	Particulars	Amount	
		Rs.	Ps.
	Dut door Stills. Of Advokat = Commission. At Unnikulam	5500	-
	5500/-		
	Total	5500	-
	Advance		
	Balance		

Received Cash

Signature

TRUE COPY

P. S. A.
ADVOKAT

- 54 -

ANNEXURE - 11(b)

RJ ENTERPRISESOpp. AKG Smaraka Vayanasala, Chakkaparambu
Kochi - 32. Ph: 0484 - 2803303No. **920** Date **2/11/2017**
M/s. Mr. **Rahul Varghese**

Rate	Item	Qty.	Amount	
			Rs.	Ps.
	Colour Print } Colour Xerox } (Legalsize)	110	2750	-
	" A3	5	175	-
	Xerox chg. B/w		2160	-
Total			5085.00	

For RJ ENTERPRISES

TRUE COPY
R. J. K.
ADVOCATE

ANNEXURE: R6 (XVII)

Item No. 5

(Court No. 2)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(By Video Conferencing)

Original Application No. 294/2022

Balan CK & Ors.

Applicants

Versus

State of Kerala

Respondent

Date of hearing: 04.05.2022 ✓

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER****Application is registered based on a complaint received by Post****ORDER**

1. The grievances made in the present letter petition sent by Mr. Balan CK and others are that M/s Geo-Enterprises has been conducting the granite quarrying at Veeryambram, Sivapuram Village Thamarassery Taluk, Kozhikode District in the State of Kerala for the last 35 years for grabbing maximum profit without considering the genuine grievances of the native inhabitants. The geo map of the area reveals the fact that M/s Geo-Enterprises has fraudulently obtained the location stretch from the village by using their influence and misleading the license authority. In Koyilottupara the demarcated area for quarry is surrounded with permanent residences of inhabitants within 50 meters of the mining area. The granite is extracted from more than 150 feet below the ground level far deeper than the benchmark. M/s Geo Enterprises is extracting granite by using prohibited chemicals for blast in the quarry. The nearby housed are jerked with the effect of explosion. The smoke dust and humus created in the chemical explosions cause serious health hazards

to local residents. The Koyilottupara quarry area was a small hillock having full of vegetation and its center peak exposed with granite rock. The company has illegally extracted huge quantity of granite changing the entire environmental conditions and caused damage to environment. The company has also applied for licence for the fourth term in the same survey which is not legally permissible.

2. In view of the grievances raised in the letter petition, the factual position needs to be verified and in case of violation of environmental norms, remedial action is required to be taken on the basis thereof. We accordingly constitute Joint Committee of SEIAA, State PCB and Collector, Kozhikode and direct the same to verify the factual position, look into the grievances of the applicants and take remedial action in accordance with law by following due process within one month from the date of receipt of a copy of this order. Collector, Kozhikode will be the nodal agency for co-ordination and compliance. Factual and action taken report may be furnished within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of image PDF.

List the matter for further consideration on 26/07/2022.

A copy of this order, along with a copy of the complaint, be forwarded to the SEIAA, State PCB and Collector, Kozhikode by e-mail for compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

May 04, 2022
Original Application No. 294/2022
AG

ANNEXURE: R6 (XVIII)

Item No. 3

(Court No. 2)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

(Through Physical Hearing with Hybrid VC Option)

Original Application No. 294/2022

Balan CK & Ors.

...Applicants

Versus

State of Kerala

...Respondent

Date of hearing: 22.11.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None.

Respondents: Mr. Reegan S. Bel, Advocate for Mr. Nisherajen
Shonker, Advocate for State of Kerala.
Ms. Varsha Awana, Advocate for Mr. Jogy Scaria,
Advocate for KSPCB.**Application is registered based on a complaint received by Post****ORDER**

1. The grievances made in the present letter petition sent by Mr. Balan CK and others are that M/s Geo-Enterprises has been conducting the granite quarrying at Veeryambram, Sivapuram Village Thamarassery Taluk, Kozhikode District in the State of Kerala for the last 35 years for grabbing maximum profit without considering the genuine grievances of the native inhabitants. The geo map of the area reveals the fact that M/s Geo-Enterprises has fraudulently obtained the location stretch from the village by using their influence and misleading the licensing authority. In Koyilottupara the demarcated area for quarry is surrounded with permanent residences of inhabitants within 50 meters of the mining area. The granite is extracted from more than 150 feet below the ground level far deeper than the benchmark. M/s Geo Enterprises is extracting granite by using prohibited chemicals for blast in the quarry. The nearby houses are jerked with the effect of explosion. The smoke dust and humus

created in the chemical explosions cause serious health hazards to local residents. The Koyilottupara quarry area was a small hillock having full of vegetation and its center peak exposed with granite rock. The company has illegally extracted huge quantity of granite changing the entire environmental conditions and caused damage to environment. The company has also applied for licence for the fourth term in the same survey which is not legally permissible.

2. Vide order dated 04.05.2022, this Tribunal constituted a Joint Committee and directed the same to submit its report within two months.

3. Report of the Joint Committee has not been received so far. The Joint Committee is again directed to submit its report within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

4. It is clarified that if the report is not submitted within the permitted period, exemplary costs may be imposed on the Members of the Joint Committee.

5. List the matter for further consideration on 30.01.2023.

6. A copy of this order, be forwarded to the SEIAA, State PCB and Collector, Kozhikode by email for requisite compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

November 22, 2022
AVT