

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 22ND DAY OF FEBRUARY 2021 / 3RD PHALGUNA, 1942

WP(C).No.30510 OF 2019(K)

PETITIONER:

PLAKKATTU GRANITE INDUSTRIES (P) LTD
PAYYANAMON P.O. KONNI, REPRESENTED BY ITS MANAGING
DIRECTOR JACOB THOMAS.

BY ADVS.

SRI.PAUL JACOB (P)
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE
SRI.GEORGE A.CHERIAN
SRI.LEO LUKOSE
SMT.SUZANNE KURIAN
SHRI.AMAL AMIR ALI

RESPONDENTS:

- 1 STATE OF KERLA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF
INDUSTRIES, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 2 THE DIRECTOR OF MINING AND GEOLOGY,
DIRECTORATE OF MINING AND GEOLOGY, PATTOM P.O.
THIRUVANANTHAPURAM 695 004.
- 3 GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT, PATHANAMTHITTA
689 691.
- 4 TAHSILDHAR (RR),
KONNI, PATHANAMTHITTA 689 691.

R1-4 BY SRI.RANJITH THAMPAN, ADDL.ADVOCATE GENERAL

OTHER PRESENT:

GOVT.PLEADER SRI.K.J. MANURAJ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-02-2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.**P.B.SURESH KUMAR, J.**

Writ Petition (C) No.30510 of 2019

Dated this the 22nd day of February, 2021**J U D G M E N T**

Petitioner is a company running a granite quarry at Payyanamon. As per Ext.P1 notice, the third respondent has called upon the petitioner to pay a sum of Rs.5,68,38,560/- towards price, royalty and other dues in respect of the granite stones quarried by the petitioner unauthorisedly beyond the limits of the land over which they secured the quarrying lease. Ext.P1 notice was issued invoking the power under Rule 58(2) of the Kerala Minor Mineral Concession Rules, 1967 (the Rules). Ext.P1 notice was challenged by the petitioner in appeal before the Government, and the Government set aside the same holding, among others, that the third respondent was not empowered to exercise the power under Rule 58(2) of the Rules. Ext.P2 is the order passed by the Government in this regard. In Ext.P2 order, it was, however, clarified that the said order will not preclude the Director of the Department of Mining and Geology (the Director) from initiating fresh proceedings against the petitioner under Rule 58(2) of the

Rules in respect of the same subject matter. In the light of the said clarification, the Director issued a notice on 4.1.2002 calling upon the petitioner to pay the very same amount demanded in terms of Ext.P1 notice in respect of the granite stones quarried by the petitioner unauthorisedly. Later, on 29.7.2002, the Government recalled Ext.P2 order to the extent it granted liberty to the Director to initiate fresh proceedings against the petitioner. Ext.P3 is the order issued by the Government in this regard. Later, on 14.01.2003, in exercise of the power under Rule 62 of the Rules, the Government authorised the Director to exercise the power under Rule 58(2) of the Rules. In the meanwhile, the petitioner challenged the notice dated 4.1.2002 before this Court in O.P.No.4734 of 2002. In the light of Ext.P3 order, this Court set aside the notice dated 4.1.2002, as per Ext.P4 judgment. After the disposal of O.P.No.4734 of 2002, the Director initiated proceedings afresh against the petitioner under Rule 58(2) of the Rules and issued Ext.P6 notice on 24.3.2012, calling upon the petitioner to pay Rs.5,68,58,560/- towards price, royalty and other dues in respect of the granite stones unauthorisedly extracted by the petitioner referred to in Ext.P1 notice. The petitioner challenged Ext.P6 notice and the order affirming the same in appeal by the Government before this Court in W.P.(C) No.25012 of 2013 and the said writ petition was dismissed as per Ext.P8 judgment. In the meanwhile, at the instance of the third respondent, proceedings have been initiated against the petitioner under the Revenue

Recovery Act for realisation of the amounts due. Ext.P7 is the demand notice issued in this regard by the fourth respondent. The petitioner though raised objections to Ext.P7 demand notice, the same have been turned down by the fourth respondent in terms of Ext.P11 order. Ext.P7 demand notice and Ext.P11 order are under challenge in the writ petition. The case set out by the petitioner in the writ petition is that what is sought to be recovered from them as per Ext.P7 demand notice is the amount covered by Ext.P1 notice with interest from the date of the said notice and since the said notice has been set aside by the Government in appeal, Ext.P7 demand notice is unsustainable in law.

2. A counter affidavit has been filed by the State in the matter contending, among others, that the liability to pay price, royalty and other dues in respect of mineral wealth of the State arises when the minerals are removed from the mother earth, and since the price, royalty and other dues in respect of the minerals extracted by the petitioner unauthorisedly have not been paid by them, they are liable to pay the same with interest from the date of its extraction.

3. Heard the learned counsel for the petitioner as also the learned Special Government Pleader.

4. The learned counsel for the petitioner contended that the only notice issued to the petitioner which is now in force is Ext.P6 and if at all the petitioner is liable to pay the amount covered by the said notice, they are

liable to pay interest for the amount covered by the said notice only for the period after the expiry of the time prescribed for payment in terms of the said notice and Ext.P7 demand requiring the petitioner to pay the amount covered by Ext.P6 notice from the date of Ext.P1 is wholly arbitrary.

5. *Per contra*, the learned Special Government Pleader contended that insofar as the amount demanded in Ext.P1 and Ext.P6 notices are one and the same and insofar as the petitioner is liable to pay the price, royalty and other dues in respect of the minerals unauthorisedly removed by them with interest from the date of removal and since there is no substance in the contention that what is sought to be realised from the petitioner as per Ext.P7 demand notice is not the amount covered by Ext.P6 notice, but only the amount covered by Ext.P1 notice.

6. As noted, Ext.P1 notice issued by the third respondent to the petitioner under Rule 58(2) of the Rules has been set aside by the Government in appeal under Rule 49 of the Rules as per Ext.P2 order. As such, the respondents cannot be heard to contend that Ext.P1 notice is enforceable. Though a notice was issued by the Director on 4.1.2002 thereafter to the petitioner under Rule 58(2) of the Rules, the same has been set aside by this Court in terms of Ext.P4 judgment. In other words, the said notice also is not enforceable. As indicated above, the Director was empowered to exercise the power under Rule 58(2) of the Rules after 14.1.2003 and Ext.P6 notice was issued by the Director thereafter on

24.03.2012 to the petitioner. The petitioner admits in the writ petition that W.P.(C) No.25012 of 2013 instituted by them challenging Ext.P6 notice has been dismissed. In other words, the liability of the petitioner to pay the amounts demanded as per Ext.P6 notice cannot be questioned by the petitioner.

7. The operative portion of Ext.P6 notice reads thus :

ഈ സാഹചര്യത്തിൽ പത്തനംതിട്ട ജില്ലയിൽ, കോഴഞ്ചേരി താലൂക്കിൽ കോന്നിത്താഴം വില്ലേജിൽ സർവ്വേ നമ്പർ 571//1 എ /12, 571/1 എ/34 എന്നിവയിൽപ്പെട്ട 1 ഏക്കർ 70 സെൻറ് സ്ഥലത്തു നിന്നും മെസ്സേജ് പ്ലാക്കാട്ട് ഗ്രാനൈറ്റ്സ് ഇൻഡസ്ട്രീസ് (പ്രൈവറ്റ്) ലിമിറ്റഡ്, പയ്യന്നൂർ വി.ഒ എന്ന സ്ഥാപനം അനധികൃതമായി ഖനനം ചെയ്ത നീക്കം ചെയ്ത 7,47,810 മെ.ടൺ കരിങ്കല്ല് റോയൽറ്റി, വില അനധികൃത ഖനനത്തിനു നിയമ പ്രകാരമുള്ള പിഴ സംഖ്യ എന്നീ ഇനങ്ങളിൽ സർക്കാരിന് അടയ്ക്കേണ്ടതായ 5,68,58,560 രൂപ (അഞ്ച് കോടി അറുപത്തിയെട്ട് ലക്ഷത്തി അമ്പത്തിയെട്ടായിരത്തി അഞ്ഞൂറ്റിഅറുപത് രൂപ മാത്രം) ഈ നോട്ടീസ് കൈപ്പറ്റി 15 ദിവസത്തിനുള്ളിൽ സർക്കാർ ട്രഷറിയിൽ ഒടുക്കി അസ്സൽ ചെല്ലാൻ രസീത് ഹാജരാക്കേണ്ടതാണെന്ന് ഇതിനാൽ അറിയിക്കുന്നു. ടി തുടയ്ക്കുള്ള മേഖലയിൽ ചെല്ലാൻ ഇതോടൊപ്പം ഉള്ളടക്കം ചെയ്യുന്നു. ഇപ്രകാരം മേൽപ്പറഞ്ഞ തുക സർക്കാർ (ട്രഷറിയിൽ ഒടുക്കി അസ്സൽ ചെല്ലാൻ ഹാജരാക്കാത്ത പക്ഷം ടി തുക ഈടാക്കുന്നതിന് റവന്യൂ റിക്കവറി ഉൾപ്പെടെയുള്ള നിയമ നടപടികൾ ഇനിയൊരറിയിപ്പു കൂടാതെ ഈ ഓഫീസ് സ്വീകരിക്കുന്നതാണെന്നും അറിയിക്കുന്നു .

As evident from the operative portion of Ext.P6 notice, what is demanded from the petitioner in terms of the said notice is only Rs.5,68,58,560/-. There is no demand in Ext.P6 notice to pay interest for the amounts demanded from the date of extraction of the mineral. Instead, only Rs.5,68,58,560/- is mentioned even in the Chalan prepared and forwarded by the Director to the petitioner along with Ext.P6 notice for effecting payment. The petitioner does

not dispute the liability to pay interest for the amount demanded as per Ext.P6 notice in terms of Section 6 of the Revenue Recovery Act. In other words, according to the petitioner, they are liable to pay interest only from the date of Ext.P6 notice, whereas, it is mentioned in Ext.P7 demand notice that the amount payable is Rs.5,68,38,560/- with interest at the rate of 12% from 19.02.2000, the date of Ext.P1 notice. Further, it is seen that requisition for initiating proceedings under the Revenue Recovery Act has been given by the third respondent, not the Director. Ext.P9 is the requisition made by the third respondent in this regard. In Ext.P9, what is mentioned is the particulars of Ext.P1 notice and not the particulars of Ext.P6 notice. It is thus evident that what is sought to be realised from the petitioner as per Ext.P7 demand notice is the amount covered by Ext.P1 notice and not the amount covered by Ext. P6 notice.

8. There is no substance in the contention of the respondents that the liability to pay price, royalty and other dues in respect of the minerals arises from the date of extraction of the minerals, as the petitioner is not fastened with any liability to pay interest from the date of extraction under Rule 58(2) of the Rules. The Kerala Revenue Recovery Act only provides for a mechanism to recover the money determined as due and the provisions of the said statute does not create any right or liability [See **State of Kerala and Others v. V.R. Kalliyankutty and Another**, (1999) 3 SCC 657]. In other words, in the absence of any direction in Ext.P6 notice to pay

interest, interest cannot be realised for the period prior to the notice in terms of the provisions of the Revenue Recovery Act.

9. Normally, in a case of this nature, this Court would have set aside the impugned demand notice and disposed of the writ petition granting liberty to the respondents to initiate fresh proceedings against the petitioner for realisation of the amounts due in terms of Ext.P6 notice. But, I do not think that the same would be a justifiable course of action on the facts of the present case. It is seen that though the petitioner challenged the notice dated 04.01.2002 issued by the Director under Rule 58(2) of the Rules in O.P. No.4734 of 2002, there was no interim order in the said case. Nevertheless, it is found that steps have not been taken for realisation of the amount covered by the said notice during the pendency of the writ petition, despite the fact that the petitioner was operating the quarry based on the quarrying lease obtained by them and despite the fact that the amount involved was more than 5 Crores. Of course, this Court ultimately found that the order dated 04.01.2002 is unsustainable. As noted, this Court set aside the order dated 04.01.2002 on 17.09.2008. It was almost four years thereafter that Ext.P6 notice was issued. As noted, though the petitioner challenged the said notice in W.P.(C) No.25012 of 2013, there was no interim order in the said case as well. Nevertheless, even while steps are being taken by all other Government Departments for realisation of even paltry sums by recourse to proceedings under the Revenue Recovery Act, steps

have not been taken by the officials concerned in the Mining and Geology Department for realisation of the hefty sum of Rs.5,68,58,560/- due from the petitioner in terms of Ext.P6 notice till February 2018. Abstinance from initiating steps for realisation of amounts of such a magnitude, according to me, would not be possible without the involvement of the concerned officers in the Department.

10. Be that as it may, it is seen from the counter affidavit filed by the State in the matter that during the pendency of W.P.(C) No.25012 of 2013, even when there was no interim order in the matter, without realising the amounts due from the petitioner, a fresh quarrying lease was granted to the petitioner. Paragraph 17 of the counter affidavit reads thus:

“17. It has come to the notice of the Government that during the pendency of the aforesaid proceedings the Director of Mining & Geology has issued an order No.740/2017-18/8571/M3/2017/DMG dated 09.2.2018 granting a fresh lease to the petitioner company in Sy.No.571/Pt of Konnithazham Village without any prior permission from the Government. The Government is intending to cancel the lease granted to the petitioner after proper notice.”

Though it is stated by the Government in the counter affidavit that the Government is intending to cancel the fresh lease granted to the petitioner, on a query from the court, the learned counsel for the petitioner admitted that the said lease has so far not been cancelled. In a case of this nature, if I adopt the course mentioned above, I have no doubt that the amount

demanded from the petitioner in terms of Ext.P6 notice is not likely to be recovered.

11. That apart, on the peculiar facts of this case, according to me, this Court would not be justified in setting aside the impugned demand notice when there is no dispute to the fact that the petitioner has not remitted the dues in terms of Ext.P6 notice. Article 226 of the Constitution is a discretionary jurisdiction to be exercised on equitable grounds. The exercise of the said jurisdiction shall only be in furtherance of the interests of justice and not merely on making out a legal point or a technicality. In other words, the jurisdiction under Article 226 cannot be exercised if the exercise of the jurisdiction would confer on the applicant undue advantages/favours and deprive the opposite party benefits which they are legitimately entitled to. Needless to say, in exercise of the said jurisdiction, the High Court cannot do anything inequitable, for those who seek equity must bow to equity [see **A. P. State Financial Corporation v. Gar Re-rolling Mills and Another**, (1994) 2 SCC 647]. In this context, it is worth referring to a few paragraphs of the judgment of the Apex Court in **Ramesh Chandra Sankla and Others v. Vikram Cement and Others**, (2008) 14 SCC 58. Paragraphs 90, 91 and 98 of the said judgment read thus:

“90. Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of *Jodhey v.*

State observed: (AIR p. 792, para 10)

“10. ... There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein.”

(emphasis supplied)

91. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae* i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a *court of law* but also as a *court of equity*. It is, therefore, *power* and also the *duty* of the Court to ensure that power of superintendence must “advance the ends of justice and uproot injustice”.

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98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities. It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As observed by this Court in *Shiv Shankar Dal Mills v. State of Haryana* courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience”.

As explicit from the extracted paragraphs of the judgment, while granting relief in favour of the applicant in exercise of the power under Article 226,

the court must certainly balance the interests and equities and is empowered to mould relief having regard to the facts of the case. Having regard to the totality of the facts and circumstance of the case, I am of the view that the writ petition can be disposed of making it clear that the amount recoverable in terms of Ext.P7 demand notice would be only the amounts covered by Ext.P6 notice with interest from the date of Ext.P6. Ordered accordingly.

12. Having regard to the materials on record, I deem it appropriate to direct the Chief Secretary of the State to ascertain through appropriate enquiry as to whether abstinence from initiating steps for realisation of amounts covered by Ext.P6 notice is with the concurrence of the officials concerned in the Department of Mining and Geology. Needless to say, if it is found in the said enquiry that any of the officers in the Department are guilty of dereliction of duty, steps shall be taken against them in accordance with law.

13. I have already indicated in the preceding paragraphs of this judgment, the manner in which the officers concerned in the Mining and Geology Department have acted in the matter of realising the dues to the Government from the petitioner. Before parting with this judgment, I am constrained to make a few observations regarding the grant of a fresh quarrying licence to the petitioner also. There cannot be any doubt that natural resources constitute public property, and the State is empowered to

distribute the same only by ensuring that the distribution is not detrimental to public interest [See **State (NCT of Delhi) v. Sanjay**, (2014) 9 SCC 772 and **Kasturi Lal Lakshmi Reddy, Represented by its Partner Kasturi Lal, Jammu and Ors. v. State of Jammu and Kashmir and Ors.**, (1980) 3 SCR 1338]. It is trite that while distributing the natural resources, the Government must act as a prudent businessman and where the State is simply selling a produce, the State must endeavour to obtain the highest price. No part of the natural resources can be dissipated for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration to the State. Whenever Government or the authorities get less than the full value of the asset, the country is being cheated [See **Natural Resources Allocation, In re, Special Reference No.1 of 2012**, (2012) 10 SCC 1]. I do not think that a prudent business man would grant a quarrying lease to a person from whom substantial amounts running to several crores are due to him, without realizing the dues. As noted, when sizable amounts running to several crores of rupees are due from the petitioner, the officers concerned of the Department have granted a fresh quarrying lease to the petitioner without insisting settlement of the dues to the Government, that too, without the concurrence of the State Government. According to me, even if there is no interdiction in the Rules to renew an existing quarrying lease or grant a fresh quarrying lease in favour of a person from whom amounts are due to the Government and even if

realisation of the dues is interdicted by way of interim orders of the court, the competent authority is not expected to make such grants without insisting payment of the entire dues for the purpose of granting renewal or a fresh grant. It is for the Government to take appropriate measures to prevent such occurrence in future, if necessary, by introducing appropriate amendments to the Rules.

The registry is directed to forward a copy of this judgment to the Chief Secretary of the State for appropriate action.

Sd/-

P.B.SURESH KUMAR, JUDGE

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APPENDIX**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE NOTICE DATED 19.02.2000
NUMBERED AS NO. 589/DOPTA/M/99 ISSUED BY
THE 3RD RESPONDENT.
- EXHIBIT P2 TRUE COPY OF THE ORDER DATED 25.08.2000
NUMBERED AS G.O. (RT) 957/2000/ID ISSUED BY
THE 1ST RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 29.07.2002
IN G.O. (RT) NO. 645/2002/ID ISSUED BY THE
1ST RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE JUDGMENT DATED
17.09.2008 IN O.P. 4743/2002 ON THE FILES
OF THIS HON'BLE COURT.
- EXHIBIT P5 TRUE COPY OF G.O. (RT) NO. 263/2012/ID
DATED 15.02.2012 ISSUED BY THE 1ST
RESPONDENT.
- EXHIBIT P6 TRUE COPY OF THE ORDER DATED 24.03.2012 NO.
1041/M2/2007 ISSUED BY THE 2ND RESPONDENT
ALONG WITH A CHALLAN.
- EXHIBIT P7 TRUE COPY OF THE REVENUE RECOVERY NOTICE
DTD. 09.0.32018 ISSUED BY THE 4TH
RESPONDENT AND SERVED ON THE PETITIONER ON
12.03.2018.
- EXHIBIT P8 A TRUE COPY OF THE JUDGMENT DATED 22.02.219
IN WPC 8872/2018 ON THE FILES OF THIS
HON'BLE COURT.
- EXHIBIT P8A A TRUE COPY OF THE JUDGMENT DTD. 09.04.2019
IN R.P. 328/2019 IN WPC 8872/208 ON THE
FILES OF THIS HON'BLE COURT.
- EXHIBIT P9 TRUE COPY OF THE REQUISITION ORDER ALONG
WITH THE CERTIFICATE FOR RECOVERY ISSUED BY
THE 3RD RESPONDENT.

EXHIBIT P10 TRUE COPY OF THE OBJECTIONS DATED
29.04.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 4TH RESPONDENT.

EXHIBIT P10A TRUE COPY OF THE OBJECTIONS DATED
10.06.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 4TH RESPONDENT.

EXHIBIT P10B TRUE COPY OF THE OBJECTIONS DATED
01.11.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 4TH RESPONDENT.

EXHIBIT P11 A TRUE COPY OF THE ORDER DATED 07.11.2019
NO. B5-1331/2018 ISSUED BY THE 4TH
RESPONDENT.

EXHIBIT P12 A TRUE COPY OF THE HEARING NOTE SUBMITTED
BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT
OBTAINED BY THE PETITIONER UNDER THE RTI
ACT.

RESPONDENT'S EXHIBITS

EXT.R1 (a) TRUE COPY OF THE GO(RT) NO.1134/13/ID DATED 5.9.2013.

(TRUE COPY)

P.S. TO JUDGE.