

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 18TH DAY OF MARCH 2022 / 27TH PHALGUNA, 1943

WP (C) NO. 4070 OF 2022

PETITIONER:

VIPIN DAS,
AGED 38 YEARS
S/O. MUKUNDAN, KOMATHU HOUSE, NANTHIKKARA,
THRISSUR.

BY ADVS.
SUNIL JACOB JOSE
SACHIN JACOB AMBAT

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, INDUSTRIES (A) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
 - 2 THE DIRECTOR,
(MING AND GEOLOGY), DIRECTORATE OF MINING AND
GEOLOGY KESAVADASPURAM, PATTOM PALACE
P.O., THIRUVANANTHAPURAM 695 004.
 - 3 SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE,
MINI CIVIL STATION, CHEMBUKKAVU, THRISSUR 20.
- BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
SHRI.S.KANNAN, SENIOR G.P. (GP-49)

OTHER PRESENT:

S.KANNAN-SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 10.03.2022, THE COURT ON 18.03.2022 DELIVERED
THE FOLLOWING:-

ANU SIVARAMAN, J.

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W.P.(c).No.4070 of 2022

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Dated this the 18th day of March, 2022

JUDGMENT

1. This writ petition is filed with the following prayers:-

- "i. Call for the records leading to Ext.P5;
- ii. Declare the commission and omission on the part of the 3rd respondent as illegal and beyond jurisdiction;
- iii. Issue a writ of mandamus or any other appropriate writ, order or direction to the 3rd respondent to forthwith implement Ext.P5 order and to grant the petitioner 60 working days to transport the extracted clay, as permitted in Ext.P5;
- iv. Issue a writ of mandamus or any other appropriate writ order or direction to the 3rd respondent to forthwith permit the petitioner to remit the royalty amount for the extracted clay and to issue transport pass to enable the petitioner to transport the extracted clay from the property."

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner had submitted an application for conducting a fish farm in 2.55 Acres of land in Survey Nos.47, 67/2, 70/2,

71/1, 53/2 and 53/4 of Porathissery village, Mukundapuram taluk, Thrissur district. By Exhibit P1, the Revenue Divisional Officer had permitted the conduct of the fish farming on certain conditions. It is submitted that preparations were started for fish farming in the property, which had earlier been used for extraction of mud for brick making. It is submitted that the extracted clay, which was accumulated in the property, was creating a hurdle for the fish farming and the petitioner submitted an application for NOC before the RDO for removal of the clay so extracted. By Exhibit P2 order dated 29.01.2021, the RDO granted permission and by Exhibit P5 order dated 10.1.2022, the petitioner's application for removal of clay was allowed by the Government. It is submitted that even thereafter, no steps were taken to issue transit passes for the petitioner to remove the clay from the property and the petitioner had submitted representations , which remained unanswered, which led to the filing of the writ petition.

4.A counter affidavit has been filed by the 3rd respondent contending that by Exhibit P1, permission was granted for fish farming on the following specific conditions:-

- (1) That the permission has been granted for cleaning the pond only to carry out fish farming therein.
- (2) The clay to be removed therefrom, consequent to cleaning of the pond shall not be transported outside the property and that the same shall be utilized for creating bunds or to stock therein, in the property without causing conversion.
- (3) The clay and earth to be removed therefrom shall not be deposited either in paddy or in wetland.
- (4) During desilting, if minerals such as clay and sand are received therefrom, the same may be apprised before the Village Officer and the Geologist, concerned.

It is submitted that there was a specific condition that the clay obtained would not be transported outside the property and the same shall be utilised for creating bunds without causing any conversion. Thereafter, the petitioner had submitted an application before the RDO for NOC to enable him to transfer the clay, which was allowed by Exhibit P2 which resulted in Exhibit P5 order of the Government. It is further submitted that the property owned by the petitioner is a paddy land and there is a prohibition for conversion of such land in terms of Section 3 of the Kerala Conservation of Paddy land and Wetland Act, 2008. It is further stated that even prior to the

issuance of Exhibit P1, the owners of the property had extracted and stocked ordinary clay from the property and that the petitioner is liable to be proceeded against for such unauthorised extraction of clay. Exhibit R3(a) receipts issued in favour of one Sri.Vijayan is produced in support of the said contention. It is submitted that Exhibits R3(b) and R3(c) communications were also issued by the Agricultural Officer in respect of the property. It is further contended that Rule 104 of the Kerala Minor Mineral Concession Rules, 2015 contemplates issuance of special permission for extraction and removal of minor minerals in special circumstances and for legitimate purposes other than winning of the mineral. It is submitted that the owner of the property had entered into Exhibits R3(e) and R3(f) agreements with Chitra Ceramics and St.Mary's Ceramics respectively for the sale of the clay removed and that as such the intention is specifically for the winning of the mineral. It is further submitted that the property covered by Exhibit P1 being paddy land, there was no permission granted for conversion of the property for fish farming and that as such Exhibit P5 order is liable to be reviewed. It is submitted that an Original Suit filed by one

Abhilash P.G is also pending before the Munsiff Court, Thrissur as O.S.No.79/2021. It is stated that pointing out these facts an, application dated 22.01.2022 has been filed before the Government by the 3rd respondent seeking a review of Exhibit P5 and that orders are awaited therein.

5.A reply affidavit has also been filed by the petitioner. It is stated that the contentions of the 3rd respondent are completely untenable and that the filing of a request for review, which is not supported by any provision of law, by the 3rd respondent will not justify the non-compliance with Exhibit P5, which is a Government Order. It is contended by the learned counsel for the petitioner that the Government has not come forward with any instructions in the matter and it is not for the 3rd respondent to sit in appeal over the directions issued by the Government.

6.I have considered the contentions advanced. It is apparent that the property in question is paddy land, but the petitioner specifically contends that it had been used for extraction of clay for brick making and had not been put to use for paddy

cultivation for long years. By Exhibit P1, the petitioner had been granted permission for use of the property for fish farming on condition that the clay extracted could not be taken out of the premises. However, the petitioner had made an application to remove the clay from the property and Exhibit P2 NOC was admittedly granted by the RDO after considering all relevant aspects. Thereafter, Exhibit P5 order was also passed by the Government under Rule 104 of the Kerala Minor Mineral Concession Rules, 2015 on 10.01.2022. The 3rd respondent apparently has a case that Exhibit P5 is an order passed without considering the relevant aspects. If that be so, it was for the 3rd respondent to approach the Government and place the facts before the Government. That apparently has been done. Therefore, unless orders are passed by the Government recalling Exhibit P5 or holding up further action pursuant to the same, I am of the opinion that the 3rd respondent cannot be heard to raise objections against orders granted by the RDO and the Government and refuse to comply with Exhibit P5, which is legally binding on him. Though the learned Government Pleader has placed a detailed affidavit on record as instructed by the 3rd respondent, no instructions

were forthcoming from the 1st respondent with regard to any action taken on the application for review. It cannot be assumed, without any material that the orders of the Government were erroneous and issued without considering the relevant facts.

7. In the above view of the matter, I am of the opinion that the 3rd respondent cannot continue to raise objections as against the NOC granted by the RDO and the order of the Government issued under Rule 104 of the Kerala Minor Mineral Concession Rules, 2015, in the absence of any interference by the Government on the basis of such application for review.

8. In the result, this writ petition is allowed. There will be a direction to the 3rd respondent to issue transit passes to the petitioner in tune with Exhibit P5 within a period of two weeks from the date of receipt of a copy of this judgment.

Writ petition is ordered accordingly.

sd/-

Anu Sivaraman, Judge

sj

APPENDIX OF WP(C) 4070/2022

PETITIONER EXHIBITS

Exhibit P1	PHOTO COPY OF THE ORDER NO. B2-9712/2020/D.DIS DATED 9/10/2020 OF THE RDO.
Exhibit P2	PHOTO COPY OF THE COMMUNICATION D3-774/2021 DATED 29/1/2021 OF THE RDO ADDRESSED TO THE 3RD RESPONDENT.
Exhibit P3	TRUE COPY OF THE LETTER NO. 245/C2/TDO/2021 DATED 16/2/2021 OF THE 3RD RESPONDENT ADDRESSED TO THE 2ND RESPONDENT.
Exhibit P4	PHOTO COPY OF THE JUDGMENT DATED 10.9.2021 IN WPC NO. 18594/2021 OF THIS HON'BLE COURT.
Exhibit P5	PHOTO COPY OF GO (RT) NO. 33/2022/ID DATED 10/1/2022 OF THE 1ST RESPONDENT.
Exhibit P6	PHOTO COPY OF REPRESENTATION DATED 24/1/2022 OF THE PETITIONER BEFORE THE 2ND RESPONDENT.
Exhibit P7	TRUE COPY OF THE REPRESENTATION DATED 4/2/2022 OF THE PETITIONER ADDRESSED TO THE 1ST RESPONDENT.

True copy

PS to Judge