

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

Wednesday, the 06th day of December, 2023.

Original Application No. 142 of 2020 (SZ)
I.A. Nos. 37, 148 and 149 of 2022(SZ) &
I.A. Nos. 21, 22 and 71 of 2023 (SZ)
(Through Video Conference)

IN THE MATTER OF

Renny Jacob George,

aged 40 years,
S/o George Mathai,
Ovumannil House, Noorommavu P.O.,
Anicadu, Pathanamthitta District- 689 589.

...Applicant(s)

Versus

1. Kerala State Pollution Control Board,

Rep by its Chairman,
Pattom P.O, Thiruvananthapuram- 695004.

2. The Environmental Engineer,

District Office, Kerala State Pollution Control Board,
Pathanamthitta- 689645.

3. Government of Kerala,

Represented by its Principal Secretary,
Department of Environment & Climate Change,
Thiruvananthapuram- 695001.

4. The District Collector, Pathanamthitta,

2nd Floor, District Collectorate, Pathanamthitta- 689 645.

5. Anicadu Grama Panchayat,

Noorommavu P.O,
Pathanamthitta- 689589.

6. The Geologist,

Department of Mining and Geology,
Pathanamthitta- 689 645.

7. The Director

Department of Mining and Geology,
Kesavadasapuram, Pattom Palace P.O,
Thiruvananthapuram- 695 004.

8. Naveen Mathew Philip,

aged 33 years,
S/o Philip Mathew,
Thekkenedumpackal, Mallappally West,
Pathanamthitta District- 689 501.

...Respondent(s)

For Applicant(s): Mr. K.K. Ashkar.

For Respondent(s): Mrs. V.K. Rema Smrithi for R1 and R2.
Mr. G. Vignesh for Mr. E.K. Kumaresan for R3, R4, R6 and R7.
Ms. Kiran Rani for
Mr. Kaushik N. Sharma for R5.
Mr. Satish Parasaran, Sr. Adv along with
Mr. Madan Babu, Ms. A.L. Gandhimathi and
Mr. P. Haridas for R8/I.A.

Judgment Reserved on: 23rd November, 2023.

CORAM:

HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

JUDGMENT

Delivered by Smt. Justice Pushpa Sathyanarayana, Judicial Member

1. The 8th respondent, who is the project proponent had obtained quarry lease dated 18.11.2005 for extracting granite building stone from an area of 1.0183 ha., in Sy Nos. 326/2, 326/4 and 326/5 of Anicadu Village for 12 years. He also had secured another quarry lease dated 22.02.2008 for extracting granite building stone from an extent of land measuring about 5.1962 ha., comprised in Sy. Nos. 328/6, 329/9, 329/10, 327/1, 325/2, 305/10 and 305/11 of the same village for a period of 12 years. Consent to operate was also obtained by the 8th respondent.

2. The applicant, who is a resident of Anicadu Village, has filed the above application alleging that the 8th respondent was carrying on the quarrying operation till 2016 when there were orders to stop

the operations by the Judgement of the Hon'ble High Court of Kerala in W.P. No. 39189 of 2015. He has claimed that a quarry should have a quarry closure plan and owner of the quarry shall have the responsibility to ensure the protective measures contained in the quarry closure plan and that the respondent had not complied with the same. Therefore, he has asked for:

- (i) Reclamation of the mining pits,
- (ii) Not to do mining without obtaining proper Environmental Clearance,
- (iii) Not to discharge the wash out effluents into the nearby creek and land,
- (iv) To take penal action under the Environmental (Protection) Act, 1986 and
- (v) Also to recover the Environmental Compensation from the 8th respondent for illegal mining of granite stone from the above referred survey numbers in Anicadu Village in Mallappally Taluk of Pathanamthitta District, Kerala without obtaining Environmental Clearance.

3. The Learned Counsel appearing for the 8th respondent objected to the maintainability of the application itself as the same is barred by limitation and also the writ Petition filed by the very same applicant before the Hon'ble High Court of Kerala on similar prayers and the orders were already passed. As the issues arising in the present application were already adjudicated upon by the Hon'ble High Court of Kerala, there is a merger of cause of action into the judgements rendered by the Hon'ble High Court.

4. Without getting into the merits of the case, it would be appropriate to advert to the order passed by the Hon'ble High Court of Kerala in **W.P No. 39189 of 2015** wherein the present applicant is the 2nd writ petitioner. The prayer in the Writ Petition was for writ of mandamus directing the official respondents to take immediate and effective steps to prohibit the illegal quarrying operations

conducted by the project proponent in the properties comprised in Sy. Nos. 325/3, 326/2, 4, 5, 327/1, 325/1 and 2, 305/6 and 11, 328/6, 329/9 and 10 of Anicadu Village in Mallappally Taluk.

5. The allegations in the writ petition was that there is a serious ecological destruction and environmental pollution caused due to massive quarrying and removal of large quantity of granites daily without Environmental Clearance. The 2nd allegation was that the lease deeds were granted without an Environmental Clearance and in view of the Deepak Kumar Case-(2012) 4 SCC 629, the project proponent cannot be permitted to continue the operations based on the lease deeds without Environmental Clearance.
6. The next objection raised was for not following the Rules 9, 12 and 13 of the Kerala Minor Mineral Concession Rules. It was alleged that no person shall be eligible for permit on a particular area of contiguous land owned and possessed by him if he has availed permits for quarrying up to a maximum period of three years in different spells on the same land. The applicant also has raised the grounds of Sustainable Development, Precautionary Principle, Polluter Pays Principle etc., and thus prayed for a direction to the project proponent to take remediation measures to restore the degraded environment by filling the huge pits formed as a result of quarrying operations in his property.
7. In this application also the applicant has sought for reclamation of the mining pits and the assessment of the environmental compensation etc. The Hon'ble High Court of Kerala had passed the common order on 16.03.2016 in W.P (C) No. 39189 of 2015

and W.P (C) No. 2783 of 2016. The W.P No. 2783 of 2016 was filed by the project proponent, herein, challenging the order of the Department of Mining and Geology dated 29.06.2015 and permitted the project proponent to continue with their mining operations. In the above writ petitions common order was passed issuing the directions which are as follows:

"1. The Geologist, after obtaining a report from the Tahsildar as to the extent of the area covered in Ext. P2 which remain unexcavated, shall permit the petitioner in W.P. (C) No. 2783/16 to excavate such area remain as unexcavated in Ext. P2. This shall be done within a period of three weeks from the date of receipt of the copy of the Judgement.

2. However, the petitioner shall not be permitted to excavate from the area covered by Ext. P3 unless the petitioner obtains Environmental Clearance.

3. It is made clear that the directions will not stand in the way of any authority for considering the application for environmental clearance. Needless to say that once the petitioner obtains environmental clearance, the petitioner is free to conduct quarrying operation in respect to the area covered both under Exts.P2 and P3."

8. As the above order has included the same cause of action raised by the applicant, herein, it was argued by the Learned Counsel for the 8th respondent that when the Hon'ble High Court has already passed the Judgement based on the same cause of action, the same is extinguished and cannot be resurrected by filling a subsequent litigation. The applicant also placed his reliance on **Som Dev & Ors vs Rati Ram & Anr.- (2006) 10 SCC 788** para-19 which reads as follows:

"19. When a cause of action is put in suit and it fructifies into a decree, the cause of action gets merged in the decree. Thereafter, the cause of action cannot be resurrected to examine whether the cause of action was enforceable or the right claimed therein could be enforced. To borrow the words of Spencer-Bower and Turner on Res Judicata, every judicial decision:

" is of such exalted nature that it extinguishes the original cause of action, and consequently bars the successful party from afterwards attempting to resuscitate what has been so extinguished and stir the dust which has received such honourable sepulture."

(See Introduction to the 2nd Edn.)

9. Learned Counsel also compared the prayers sought for in the writ petition and the prayers sought for in the present application and demonstrated that all issues raised and relief sought for in the present proceedings have either already been adjudicated upon or pending before the Division Bench of the Hon'ble High Court.
10. It was pointed out by the Learned Counsel for the applicant that the relief of reclamation, restitution and compensation were not considered by the Hon'ble High Court of Kerala and the same have to be looked into by this Tribunal. The same was opposed by the respondent stating that though the above referred prayers were specifically sought for by the applicant before the Hon'ble High Court of Kerala, the same deemed to have been impliedly refused by the Hon'ble High Court. The same is admitted by the Learned Counsel for the applicant.
11. The Judgement of the Kerala High Court was passed on 16.03.2016 giving quietus to all the issues which arose out of the quarry operations. Admittedly, the 8th respondent had stopped quarrying from March, 2016 immediately after the orders were passed in the writ petitions. Therefore, there cannot be any fresh cause of action for the applicant and the respondent cannot be vexed twice for the same cause of action. If the applicant was so aggrieved, he could have preferred a review or an appeal.
12. The Learned Counsel appearing for the applicant also could not establish that after the orders of the Hon'ble High Court passed in March, 2016 there were further quarry activity by the respondent and admitted that the quarry operations were stopped by the 8th

respondent in March, 2016. In the absence of any such fresh cause of action, the application filed by the applicant in the year 2020 cannot be maintained and the same is rejected on the preliminary issue. Consequently, the Original Application is dismissed.

13. In view of the disposal of the Original Application, the Interlocutory Applications also stands dismissed.

Sd/-

.....J.M.
(Smt. Justice Pushpa Sathyanarayana)

Sd/-

.....E.M.
(Dr. Satyagopal Korlapati)

Internet – Yes/No

All India NGT Reporter – Yes/No

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Southern Zone (Chennai)**

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