

(2024) 10 KL CK 0049
In the High Court Of Kerala
Case No : Review Petition No.783 Of 2024

Director

APPELLANT

Vs

M/s Mangalath Granites Kerala (P) Ltd

RESPONDENT

Date of Decision : 08-10-2024

Acts Referred:

Kerala High Court Act, 1958 — Section 5
Kerala Minor Mineral Concession Rules, 2015 — Rule 27(2)(c)

Citation : (2024) 10 KL CK 0049

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : S.Kannan

Final Decision : Dismissed

Judgement

Murali Purushothaman, J

1. This review petition is filed by the respondents in W.P.(C) No.21524 of 2023 seeking to review the interim order dated 11.09.2023 and the modified order dated 12.03.2024 therein.

2. The writ petition was filed for a direction to the Director of Mining and Geology, the 1st review petitioner/1st respondent to execute quarrying lease in favour of the petitioner on the basis of statutory licenses and permits.

3. When the writ petition came up for consideration on 11.09.2023, this Court passed the following order.

"The 1st respondent has filed a statement and the relevant portion is extracted hereunder:-

"2. It is humbly submitted that the office of this respondent received a letter from the District Geologist, Thrissur along with Form B application and other documents submitted by Sri. Jacob Mathew, Managing Director, Mangalath Granites Kerala Pvt. Ltd. Chelakkara P.O. Thrissur. Based on the above

documents, this respondent issued a letter of intent to the petitioner to produce Mining Plan and Environment Clearance as stipulated in the KMMC Rules, 2015, to the area applied for, consent from Pollution Control Board, Explosive License from the authorities concerned and D & O License from the Local Self Government authorities concerned to grant quarrying lease. On Scrutiny of the file the following defects were noticed.

1. The present demarcation certificate issued with applicant is as an individual, it should be changed to the name of the company.
2. The details of the approved quarry closure plan of the old quarry should be furnished (as per the sub specific condition 8 of Specific condition 4 of Environmental Clearance).
3. In the resolution, in addition to location and area, the details of the owners of the land also to be incorporated.
4. The master data of the company should be submitted.
5. A numbered survey map has to be submitted.
6. More clarity is required regarding the difference in area in possession certificate and survey map and also in the ownership of the Company.
7. Documents related to Wild Life Sanctuary Clearance should be submitted.
8. A registered lease agreement between the applicant and the land owners for sufficient period permitting the applicant to occupy the land for mining operations for which application has been submitted (as per the Clause (C) of Sub- Rule 2 of Rule 27 of KMMC Rules)

3. It is humbly submitted that this respondent can grant quarrying lease to the petitioner within a period of one month from the date of the submission of the above said original and valid documents.”

2. In the statement, the 1st respondent has pointed out the defects noted while considering the case of the petitioner for granting quarrying lease. The 2nd defect noted in the statement cannot be sustained in the light of Clause 4 (8) of Ext. P1(b) Environmental Clearance Certificate which reads as follows:-

“8. The proponent shall carry out the final quarry closure activities as proposed by Department of Mining and Geology at the site where he carried out quarrying operations from 2007 to 2017. Activities relating progressive and final closure of quarry at the present project site shall be carried out as per approved Mining Plan which will be reviewed at regular intervals. The non-compliance of the same may lead to cancellation of Environmental Clearance.”

3. With regard to defect No. 7, in the light of paragraph 4 of Ext. P7 judgment, the petitioner cannot be insisted to submit documents relating to wildlife sanctuary clearance.

4. As regards defect No. 8, on a reading of Clause (C) of Sub-Rule 2 of Rule 27 of the Kerala Minor Mineral Concession Rules (In short, "KMMC Rules"), the petitioner cannot be insisted to produce the registered lease agreement with the land owner as the said amendment came into force only with effect from 31.03.2023 and the letter of intent issued to the petitioner is dated 25.07.2017.

5. It is submitted by the learned counsel for the petitioner that, the petitioner has already cured other defects noted in the statement.

Accordingly, there will be an interim direction to the 1st respondent to consider the grant of quarrying lease to the petitioner de hors the defects noted in paragraph 2 (other than defect Nos. 2,7 and 8) of the statement and in accordance with law. The same shall be done within a period of three weeks from the date of a receipt of a copy of this order".

4. Since the 1st review petitioner did not comply with the directions in the interim order dated 11.09.2023, the writ petitioner filed Contempt of Court Case (Civil) No.2451 of 2023 on 28.10.2023. When the contempt of court case came up for consideration, this Court noticed that a mistake had been crept in the operative portion of the order dated 11.09.2023 and directed the Registry to post the writ petition along with the contempt of court case. However, by the time, the writ petition itself was disposed of on 12.12.2023 on the basis of the submission made by the learned counsel for the petitioner that in view of the interim order dated 11.09.2023, no further orders are required.

5. Thereafter, writ petitioner filed R.P. No.133 of 2024 in the writ petition and this Court, by order dated 09.02.2024, allowed the review petition and recalled the judgment dated 12.12.2023. The order in R.P. No.133 of 2024 reads as follows:

"This Review Petition is filed to seek a review of the judgment in Writ Petition No. 21524 of 2023.

2. Sri Enoch, the learned counsel appearing for the petitioner, submitted that while disposing of the matter by judgment dated 12/12/2023, this Court took note of the interim order dated 11/09/2023 and made it absolute. The counsel points out that when the respondents did not adhere to the interim directions, a contempt proceeding was initiated. During the said proceeding, the learned Single Judge, who had issued the interim order, identified certain errors in the operative portion of the order. Nevertheless, as the case had already been concluded by confirming the interim order as final, these identified errors have remained unaddressed.

3. The learned Government Pleader points out that the State is also filing a petition to review the judgment. Having considered the submissions, I find that there is a clear error on the face of the record that necessitates invocation of the Court's review powers.

Accordingly, the Review Petition is allowed.

The judgment dated 12/12/2023 in Writ Petition (C) No. 21524 of 2023 is recalled.

Post before the appropriate Court.”

Pursuant to the order in R.P.No.133 of 2024, this Court passed order dated 12.03.2024 suo motu correcting the mistake crept in the order dated 11.09.2023 in W.P. (C) No.21524 of 2023. The order dated 12.03.2024 reads as follows:

“When the tagged Contempt of Court Case arising out of the interim order dated 11.09.2023 passed in the captioned writ petition came up for consideration, this Court noted that a mistake had been crept in the operative portion of the said order. Therefore, this Court directed the Registry to post the writ petition along with the Contempt Case. Though the intention of this Court is discernible from the preceding paragraphs of the order, the mistake needs to be corrected. Accordingly, the last paragraph of the order dated 11.09.2023 is suo motu corrected as follows:

“Accordingly, there will be an interim direction to the 1st respondent to consider the grant of quarrying lease to the petitioner de hors the defects Nos.2, 7 and 8 noted in paragraph 2 of the statement filed by the 1st respondent and in accordance with law. The same shall be done within a period of three weeks from the date of receipt of a copy of this order.”

Post the writ petition as per roster, when moved”

6. Respondents 1 and 2 (review petitioners) challenged the order dated 12.03.2024, in W.A. No.722 of 2024. Contempt Case No.2451 of 2023 was adjourned since it was submitted that writ appeal has been preferred against the interim order. The writ appeal was dismissed by the Division Bench by judgment dated 02.07.2024 with an observation that it would be open for the appellants/State to seek review of the impugned order. The said judgment reads as follows:

“By way of the present appeal filed under section 5 of the Kerala High Court Act, 1958, the appellants have challenged the interim order passed by a learned Single Judge on 12.03.2024 in W.P.(C)No.21524 of 2023.

2. After hearing the learned counsel appearing for the respective parties and after perusing the order impugned in the appeal, we find no reason to interfere with the impugned order. Hence, the writ appeal is dismissed. However, it would be open for the appellants/State to seek review of the impugned order. Pending interlocutory applications, if any, shall stand closed.”

7. The contempt case was adjourned since it was submitted that the respondents 1 and 2 propose to file review petition against the interim order. This review petition is filed by respondents 1 and 2 with a delay of 105 days and by order dated 07.08.2024, the delay was condoned. In the review petition, it is contended that writ appeal was filed only against the modified order dated 12.03.2024 and the original interim order dated 11.09.2023 was not challenged

and on the said score, the Division Bench declined to interfere with the impugned order and dismissed the writ appeal by permitting the appellants to seek a review of the impugned order.

8. A counter affidavit has been filed by the 1st respondent/writ petitioner in the review petition contending that the review petition is not maintainable insofar as the order under review was challenged by the review petitioners in appeal by filing W.A. No.722 of 2024. The writ appeal was dismissed on merits specifically stating that there is no reason to interfere with the impugned order. It is contended that since the writ appeal was dismissed on merits, a review petition against the very same order cannot be entertained. Producing a copy of the writ appeal memorandum as Annexure-R1(a), it is contended that the grounds urged in the review petition are identical to the grounds in the writ appeal and not even a fresh ground is urged in the review petition. It is further contended that the order dated 11.09.2023 was suo motu corrected by this Court by order dated 12.03.2024 and as such, there is only one order viz., the order dated 12.03.2024, and the suo motu order correcting the earlier order dates back to the earlier order. It is that order which was challenged in writ appeal and the review petitioners cannot contend that only the modified order is challenged and the original interim order dated 11.09.2023 was not challenged. The contention of the review petitioners on merits is also traversed by the writ petitioner in the counter affidavit. It is contended that the review petition is filed only to harass the writ petitioner and that the writ petitioner has been running from pillar to post for the past more than two years for execution of the quarrying lease.

9. Heard Sri. S.Kannan, the learned Senior Government Pleader for the review petitioners and Sri.Enoch David Simon Joel for the respondents.

10. While considering Contempt Case No.2451 of 2023 filed alleging non-compliance with the direction in the order dated 11.09.2023, this Court noticed that a mistake had been crept in the operative portion of the order. Accordingly, the last paragraph of the order was suo motu corrected to remove any confusion caused by the phrasing. While correcting the mistake which was grammatical, this Court observed: 'Though the intention of this Court is discernible from the preceding paragraphs of the order, the mistake is to be corrected'. Once the order dated 11.09.2023 was corrected by order dated 12.03.2024, the review petitioners cannot contend that the writ appeal was filed only against the order dated 12.03.2024 and the order dated 11.09.2023 is not challenged. When the order dated 11.09.2023 was corrected by the order dated 12.03.2024, only the order dated 12.03.2024 will prevail. The respondents 1 and 2 (review petitioners) preferred writ appeal against the order dated 12.03.2024 and the Division Bench, finding no reason to interfere with the impugned order, dismissed the appeal. However, it was observed that, it would be open for the appellants/ State to seek review of the impugned order. A copy of the writ appeal memorandum has been produced by the learned counsel for the writ petitioner. Since it is contended that the "Grounds" raised in the review petition are the

verbatim reproduction of the writ appeal memorandum, I perused the writ appeal memorandum and I find that the "Grounds" urged in the review petition are the same as those urged in the writ appeal, which has been dismissed. The attempt of the review petitioners seems to re-agitate and re-argue the questions which have already been addressed and considered while passing the impugned order. No error apparent on the face of the record or any other sufficient reason has been shown to review the impugned order. However, since the writ petitioner has joined the issue and the parties have advanced arguments on merits, in order to bring a quietus to the matter, this review petition is disposed of on merits as well.

11. It is contended by the review petitioners that this Court went wrong in finding that the defect No.2 pointed out in the statement filed by the 1st review petitioner in the writ petition cannot be sustained. Defect No. 2 reads as follows:

"2. The details of the approved quarry closure plan of the old quarry should be furnished (as per the sub specific condition 8 of Specific condition 4 of Environmental Clearance)."

In the counter affidavit filed by the writ petitioner in the review petition, though it is contended that there is no requirement of submission of quarry closure plan under the KMMC Rules, it is stated that the writ petitioner had submitted Annexure R1(b) quarry closure plan before the 2nd review petitioner on 01.09.2023. Therefore, the impugned order does not warrant a review on that ground.

12. It is contended by the review petitioners that, this Court went wrong in observing that with regard to defect No.7, in the light of paragraph 4 of Ext. P7 judgment, the writ petitioner cannot be insisted to submit documents relating to wildlife sanctuary clearance. Defect No. 7 reads as follows:

"7. Documents related to Wild Life Sanctuary Clearance should be submitted."

In the impugned order, this Court held that, in the light of paragraph 4 of Ext. P7 judgment, the writ petitioner cannot be insisted to submit documents relating to wildlife sanctuary clearance. Ext. P7 is the judgment in WP (C) No. 3750 of 2023, the earlier round of litigation for execution of quarrying lease, filed by the writ petitioner. Paragraph 4 reads as follows:

"4..... Going by the report submitted and on the basis of the submissions made by the learned Senior Government Pleader, the petitioner's unit is admittedly not within the 10 km radius of Peechi-Vazhani and Chulannur Peafowl Sanctuaries and therefore NOC of NBWL as demanded in Ext P9 communication is not required. The petitioner undertakes to clear all other defects, i.e. defect Nos. 2 to 6 noted in Ext P9. Therefore, above writ petition is disposed of with a direction to the 1st respondent to consider the application for grant of mining lease submitted by the petitioner without insisting for clearance from Standing Committee for National Board for Wildlife (SCNBWL), within a period of two months from the date of receipt of a copy of this judgment, if defects noted as 2

to 6 in Ext P9 is cured.”

(underlining supplied by this Court)

13. The review petitioners contend that though it is true that the applied area is situated at a distance of 10.4 Km from the boundary of Chulannur Peafowl Sanctuary, there is another wildlife sanctuary named Peechi-Vazhani Wild Life Sanctuary situated close to the applied area. On measurement of distance, it is seen that quarry is situated at a distance of 8.068 km from the boundary of the said wild life sanctuary. It is submitted that in WP(C) 3750 of 2023, the Wild Life Warden, the 4th respondent therein, did not mention about the distance from the Peechi-Vazhani Wild Life Sanctuary. I am afraid, I cannot find favour with the said submission of the review petitioners. In Ext. P7 judgment, this Court has observed that, going by the report submitted and on the basis of the submissions made by the learned Senior Government Pleader, the writ petitioner's unit is admittedly not within the 10 km radius of Peechi-Vazhani and Chulannur Peafowl Sanctuaries and therefore NOC of National Board of Wildlife is not required. The said judgment has become final. In the counter affidavit filed by the writ petitioner, it is pointed out that, at no stage of the proceedings, there was any objection raised as regards the distance of the quarry from Peechi – Vazhani Wildlife Sanctuary. The writ petitioner refers to Annexure R1(f) order of this Court in WP(C) No. 3750 of 2023, the relevant portion of which reads as follows:

“3. With regard to the distance from the Peechi – Vazhani Wildlife Sanctuary, it is stated that Ext. P7 report would show that the quarry is beyond the objectionable limits. However, there will be a direction to the 4th respondent to conduct an inspection and place a report on record with regard to the distance of the quarry from the Chulannur Peafowl Sanctuary within a period of two weeks from the date of receipt of a copy of this order.”

(underlining supplied by this Court)

Ext. P7 referred to in the above order is issued by the Wild Life Warden to the 2nd review petitioner, the Geologist. Therefore, the review petitioners cannot now be heard to say that the Wild Life Warden did not mention about the distance from the Peechi-Vazhani Wild Life Sanctuary and the writ petitioner shall obtain NOC from National Board of Wildlife. Therefore, the impugned order does not require a review on the said ground as well.

14. Finally, it is contended by the review petitioners that, with regard to defect No.8, this Court went wrong in observing that the writ petitioner cannot be insisted to produce the registered lease agreement with the land owner since the amendment came into force only with effect from 31.03.2023 and the Letter of Intent issued to the petitioner is dated 25.07.2017. Defect No. 8 reads as follows:

“8. A registered lease agreement between the applicant and the land owners for sufficient period permitting the applicant to occupy the land for mining operations for which application has been submitted (as per the Clause (C) of

Sub- Rule 2 of Rule 27 of KMMC Rules).”

It is contended that as per the provisions of the Registration Act, 1904 and the KMMC Rules, as amended w.e.f 31.03.2023, a registered lease agreement is mandatory. It is stated that as per the amendment in KMMC Rules, the applicants are required to produce a copy of the registered lease agreement, as stipulated in clause (C) of sub-rule (2) of Rule 27. This Court in the impugned order observed that the writ petitioner cannot be insisted to produce the registered lease agreement with the land owner as the amendment came into force only with effect from 31.03.2023 and the letter of intent issued to the writ petitioner is dated 25.07.2017. Referring to the decision of this Court in Sheriff A.H. v. State of Kerala [2024 (1) KLT 581: 2024 KHC 1001], Sri, Kannan would contend that the application for quarrying lease can be considered only in the light of the law prevailing as on the date of disposal of the application. In the said decision, this Court held that in the absence of any vested right, an application for grant of NOC for quarrying granite on Government land has to be considered on the basis of the guidelines in force as on the date of consideration of the application and not on the basis of the law prevailing as on the date of filing of the application. In this case, since there was inordinate delay on the part of the review petitioners in executing quarrying lease, the writ petitioner approached this Court by filing WP (C) No. 25384/2022 for direction to the review petitioners to complete the proceedings for execution of the quarrying lease expeditiously and this Court, by Ext. P4 judgment directed the 1st review petitioner to conclude the proceedings within a period of 3 months. Thereafter, by Exts. P5 and P7 judgments, this Court issued appropriate directions to the 1st review petitioner to conclude the proceedings on the application of the writ petitioner for execution of quarrying lease within the time frame provided therein. Each time the defects were noted, the writ petitioner approached this Court and sought for and obtained direction from this Court to conclude the proceedings on the application for execution of quarrying lease expeditiously. All these directions were obtained before 01.04.2023, before the amendment to KMMC Rules. In Sheriff (supra), there was no direction sought for and obtained by the petitioner therein from this Court for an early consideration of his application for NOC before issuance of Guidelines for grant of NOC for mining of minerals from Government land. In the circumstances, the dictum laid down in Sheriff (supra) cannot apply to the facts of the case on hand. Therefore, the writ petitioner cannot be insisted to produce registered lease agreement with the land owner and the impugned order does not warrant a review on the said ground also.

I do not find any merit in the review petition.

Accordingly, the review petition is dismissed.