
(2023) 12 KL CK 0195

In the High Court Of Kerala

Case No : Writ Petition (C) No. 36063 Of 2023

Nilamboor Sand And Metals Pvt. Ltd

APPELLANT

Vs

Director Of Mining And Geology

RESPONDENT

Date of Decision : 20-12-2023

Acts Referred:

Forest Conservation Act, 1980 — Section 2

Citation : (2023) 12 KL CK 0195

Hon'ble Judges : Murali Purushothaman, J

Bench : Single Bench

Advocate : Babu S. Nair, Smitha Babu

Final Decision : Disposed Of

Judgement

Murali Purushothaman, J

1. The petitioner company was issued with Ext. P1 Letter of Intent (LOI) for the purpose of quarrying lease for extraction of granite building stones from an area of 2.4109 hectares in R.S. Nos. 1/161-2, 1/161-4, 1/161, 1/182-4, 1/45, 1/181-4 of Pullippadam Village in Nilambur Taluk, Malappuram District. Following the issuance of LOI, the petitioner obtained environmental clearance and consent to operate from the Pollution Control Board and approved mining plan, explosive license and D & O license from the concerned authorities. Before granting the mining lease, the second respondent Geologist, by Ext. P2 letter, requested the third respondent Divisional Forest Officer (DFO) to issue No Objection Certificate (NOC) to the petitioner. The petitioner states that the Divisional Surveyor attached to the Nilambur North Forest Division conducted an inspection of the site and submitted Ext. P3 report and survey map to the Range Forest Officer stating that the area where the quarrying lease is to be granted is beyond the prohibitory distance of the boundary of the forest. The DFO, through Ext. P4 letter, raised a query to the Geologist whether there is any road other than the forest road for the petitioner to transport the products from the quarry. The Geologist, by Ext. P5 letter, replied that, as per the information available, there

are no other roads to transport the products from the quarry than the one marked in the survey map.

2. According to the petitioner, the area where the quarrying lease is to be granted is situated alongside Nayadumpoyil-Nilambur Road which is owned and maintained by the Public Works Department (PWD), Government of Kerala, and all private and public vehicles including KSRTC buses and private operators are allowed to ply through this road, without any restrictions. After about 3 or 4 kilometers from the petitioner's properties, the road passes through the forest. It is also stated that, though the road traverses through a portion of the forest, the same is not owned by the Forest Department. The petitioner states that the DFO is denying NOC for execution of quarrying lease for the reason that the PWD road passes through a small portion of the forest. The petitioner contends that the stand taken by the DFO is illegal and arbitrary and seeks intervention of this Court. The petitioner refers to Ext. P6 judgment of this Court and submits that, when the DFO imposed restrictions on the transportation of products from certain stone crushers through another road of the same nature, this Court held that when every other vehicles are allowed to use the road, certain persons alone cannot be discriminated. Accordingly, the petitioner has preferred this writ petition for direction to the 3rd respondent to issue NOC to the petitioner for execution of quarrying lease as per Ext. P1 LOI and Ext. P3 survey report and to declare that the stand taken by the 3rd respondent to deny NOC for the reason that the products from the quarry are to be taken through a public road which passes through the forest in a small area, is illegal and arbitrary in view of Ext. P6 judgment.

3. A Statement has been filed on behalf of the 3rd respondent stating that for the purpose of processing NOC for the execution of quarrying lease, the DFO, by Ext. P4 letter, made a query to the Geologist whether there is any road other than the forest road for the petitioner to transport the products from the quarry. Since the Geologist, by Ext. P5, replied that they did not possess information regarding usage of any other roads to transport the products from the quarry other than the forest road, the DFO again repeated the query to the Geologist by Ext. R3(a) letter and a reply is awaited. It is also stated that Ext. P3 report and survey map is not authentic and cannot be acted upon. Further, the Nayadumpoyil-Nilambur Road passes through forest areas under the jurisdiction of Nilambur North Forest Division and four different forest areas (Pokkode reserve forest, Moovayiram Malavaram vested forest, Edakkode reserve forest and Urngattiri Malavaram vested forest). The approximate length of the forest road is more than 2.5 Kilometers and since it is passing through forest areas, petitioner has no legal or statutory right to ply their vehicles for commercial purpose through the said road. It is contended that no commercial activity can be permitted by the Forest Department in the public road which passes through a forest area. Reference is made to Section 2 of the Forest Conservation Act, 1980 and states that as per the said provision, the permission of the Central Government is necessary for such activities. It is also stated that the forest

patches connecting Moovayiram Malavaram Vested Forest and Pantheerayiram Malavaram Vested Forest are along this road and ecologically this road acts as a wildlife corridor and any commercial activity on this road will be detrimental to the free movement of wild life and that might result in an increase in human wildlife conflict in these areas. It is stated that transporting of products from the petitioner's quarry through reserve forest is a non-forest activity. The road which passes through the forest land has the status of reserve forest and no permission can be granted using it for non-forestry purpose in violation of the provisions of the Forest Conservation Act, 1980 as well as the Kerala Forest Act, 1961. The 3rd respondent also refers to certain judgments of this Court and submits that this court has held that the road passing through the forest land cannot be used for non-forestry purpose and the petitioners therein cannot have any fundamental right to take vehicles through a forest land contrary to the provisions of the Forest Conservation Act, 1980 as well as the Kerala Forest Act, 1961. It is stated that the application for NOC for execution of quarrying lease is still under processing before the 3rd respondent and no decision is yet taken thereon for want of clarification from the Geologist.

4. Heard Sri. Babu S. Nair, the learned counsel for the petitioner and Sri. T.P. Sajan, the learned Special Government Pleader (Forest).

5. It is not in dispute that Nayadumpoyil-Nilambur Road is constructed and maintained by the Kerala PWD. The fact that about 2.5 Kilometers of the said road passes through forest areas is also not in dispute.

6. Sri. Babu strongly relies on Ext. P6 judgment wherein a learned Single Judge of this Court held that, when every other vehicles are permitted to use the road, interdiction which extends only to the petitioners' vehicles cannot be sustained. In that case, the petitioners were using a public road through a forest area for access to their crusher unit. About 1.1 km stretch of the public road passes through forest area. All vehicles are being permitted to ply on that road. The Forest Department passed an order interdicting the plying of petitioners' vehicles through that road. It was contended that interdicting plying of the petitioners' vehicles alone is violative of their fundamental rights and discriminatory. This Court held that, it would be well within the power of the Forest Department to interdict the usage of a portion of the public road which passes through the forest land for commercial activity, but, interdiction which extends only to the petitioners' vehicles cannot be sustained.

7. Sri. Sajan would contend that the road passing through forest land cannot be used for non-forestry purposes and such activities would require the prior approval of the Central Government under Section 2 of the Forest Conservation Act, 1980. Sri. Sajan would rely on the judgment of this Court in K.S. Abdul Kareem v. State of Kerala, [judgment dated 12.04.2018 in W.P (C) No.33526 of 2017] wherein this Court considered the question whether the petitioner therein is entitled to use a road, 700 meters whereof is a forest road, to transport boulders to his quarry and the finished products from the quarry to various

destinations. This Court held that the transportation of boulders and finished products by the petitioner through the forest area is a commercial activity, which will cause hindrance to the Forest Department and wildlife and a forest area cannot be used for any commercial activity in accordance with the provisions of the Forest Conservation Act as well as the Kerala Forest Act, 1961. The said judgment was confirmed by the Division Bench in W.A. No. 971 of 2018. Sri. Sajan further relies on the judgment of this Court in *Binu.v v. Divisional Forest Officer* and another [judgment dated 04.11.2020 in W.P (C) No.6349 of 2020] wherein the learned Single Judge held that use of vehicle through a road in a reserve forest for transportation of explosives, which is for commercial activity, is impermissible under the Forest Conservation Act as well as Kerala Forest Act and the petitioner cannot have any fundamental right to take vehicles through a reserve forest contrary to the provisions in those statutes. The said judgment was confirmed by the Division Bench in W.A. No. 1725 of 2020.

8. As already stated, it is not in dispute that certain portion of Nayadumpoyil- Nilambur Road passes through forest areas. The road passing through forest land cannot be used for any commercial activities. The same is impermissible under the Forest Conservation Act, 1980 as well as Kerala Forest Act, 1961. The petitioner does not have the right to use vehicles for commercial activities within the forest land. Even in Ext. P6 judgment relied on by the petitioner, this Court held that, it would be well within the power of the Forest Department to interdict the usage of a portion of the public road which passes through the forest land for commercial activity. However, this Court observed that when the road is open for all purposes, an interdiction which extends only to the petitioners' vehicles cannot be sustained. It was also observed that, it would be open to the Department to put up restrictions in respect of any vehicular traffic or pass any general order with regard to the user of the road. Therefore, the contention of the petitioner that NOC for execution of quarrying lease cannot be denied for the reason that the products from the quarry are to be taken through a public road which passes through the forest, is not sustainable.

It is stated by the 3rd respondent that the application for NOC for execution of quarrying lease is still under processing and no decision is yet taken thereon for want of clarification from the Geologist. There will be a direction to the 2nd respondent to provide necessary clarification as sought for in Ext. R3 (a) within a week from the date of receipt of a copy of this judgment and the 3rd respondent shall consider and dispose of the application for NOC, within two weeks therefrom, after hearing the petitioner. The petitioner has a contention that others are allowed to ply through the road in question, without any restrictions. The 3rd respondent shall also consider the said contention, bearing in mind the principles of equality enshrined in the Constitution of India and the relevant statutory provisions.

The writ petition is disposed of accordingly.