

(2012) 08 KL CK 0150
In the High Court Of Kerala
Case No : WP (C) . No. 15956 of 2012 (T)

P.L. Mohanan

APPELLANT

Vs

The Superintendent of Police Pathanamthitta and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 08 KL CK 0150

Hon'ble Judges : P. Bhavadasan, J;M. Sasidharan Nambiar, J

Bench : Division Bench

Advocate : P. Vijaya Bhanu, Sri. Sabu George and Sri. Nidhi Balachandran, for the Appellant; C.S. Manilal For R1 To R3 Senior Government Pleader, Sri. M.R. Rajesh For R4 and R5 Advocate and Sri. T.P. Pradeep For R8 To R12 Advocate, for the Respondent

Judgement

Sasidharan Nambiar,J.

1. Petition is filed under Article 226 of Constitution of India for a writ of mandamus compelling respondents 1 to 3 to render adequate and sufficient police protection to the petitioner and his workers for conducting sand mining from the property having an extent of 66 cents in old survey No.521/3 and 521/4 in R.S.No.111/6-2 Block No.10 of Kuttoor Village, Thiruvalla Taluk on the strength of Ext.P10 permit without any hindrance or obstruction from respondents 4 to 12. Petitioner would contend that under Ext.P10 permission was granted to excavate sand till 20/8/2012 to the extent of one thousand metricton subject to the conditions and petitioner is prepared to comply with the conditions and therefore, respondents 4 to 12 are not entitled to cause any obstruction and as they threatened to cause obstruction, respondents 1 to 3 are to be directed to render adequate and sufficient police protection. Third respondent filed a statement through the Government Pleader stating that petitioner had obtained all requisite permissions and licenses from different Government departments and the work initially started could not be continued on account of the physical

obstruction caused by the respondents who are political activists and also said to be environmental activists and neighbouring persons. It is also contended that when the workers were obstructed, the WPC 15956/12 petitioner submitted a complaint against respondents 4 to 12 and a detailed enquiry was conducted by the Sub Inspector of Police, Thiruvalla and respondents 4 to 12 were summoned and they stated that no mining work will be allowed in the plot and due to the obstructions, work had been stopped. It is also stated that so far no law and order problem had arisen and if the work is started, respondents are likely to oppose and obstruct the mining operation which will ultimately lead to law and order problem. It is also stated that since the petitioner has obtained necessary licenses, he can conduct quarry operations.

2. When the matter was heard originally, respondents 13 and 14, the Government of Kerala as well as the Geologist, Mining and Geology Department, Pathanamthitta were impleaded.

3. Respondents 8 to 12 filed a counter affidavit contending that the land owned by the petitioner is situated in the banks of river "Varattar" and it is a tributary of river "Pamba" and Legislative Committee recommended to the Government that sand mining from the sides of Varattar should be banned and the sand mafia with the help of some corrupted bureaucrats obtained some illegal permits and conducted very large scale of mining operations in the banks of Varattar and caused serious environmental problems in the locality. It is contended that Mining and Geology department of Pathanamthitta district is issuing mining permits mechanically without considering the ecological impacts of sand mining in the banks of Varattar and in view of the decision of the WPC 15956/12 Apex Court in Deepak Kumar & Others v. State of Haryana & others (2012 (4) SCC 629) before granting permission for sand mining, report from the Ministry of Environment and Forest, for mining of minor minerals in the lands less than 5 hectares is to be obtained and as no such report is obtained, petitioner is not entitled to undertake the sand mining pursuant to Ext.P10 license and therefore, petitioner is not entitled to the police protection sought for.

4. In view of the decision of the Apex Court in Deepak Kumar's case (supra) by order dated 26/7/2012, a report from the Senior Environmental Engineer, Pathanamthitta, after inspecting the property covered under Ext.P10, on whether granting permission to remove the sand from the property would cause any WPC 15956/12. Environmental problem, in view of the proximity of land to Varattar river was obtained. The report submitted by the Environmental Engineer, Kerala State Pollution Control Board, Pathanamthitta shows that on 8/8/2012 as directed the Environmental Engineer along with Assistant Environmental Engineer, inspected the area covered by Ext.P10 and noted that a stream is flowing on the southern boundary of the proposed sand mining property, and it is seen filled with water weeds. It is also reported that there was different claims whether that stream is Varattar or Anjilikkuzhy thodu and there are six residences and two wells within 25 meters from the boundary of the property

covered under Ext.P10. The water table in the area is very high and there are no bunds along the stream or downstream of the proposed land. The Environmental Engineer therefore reported thus;

1. Chances of well water depletion
2. in the nearby wells. Well water contamination (muddiness) due to ground water table disturbance.
3. Chances of flooding in the nearby area during rainy seasons as there is no proper bund as such along the stream.

Based on the findings it is reported that "if sand mining is granted to remove sand from the property under Ext.P10 much environmental problem is not expected to Varattar/nearby stream provided a bund of minimum 5 meter width along the periphery of the stream adjoining to the land in question is constructed."

6. Learned counsel appearing for WPC 15956/12 respondents 8 to 12 submitted that the report of the Environmental Engineer is not correct and cannot be accepted. We find no reason to accept the said submission.

7. In the light of Ext.P10 license and the report of the Environmental Engineer, petitioner is entitled to undertake sand mining from the property covered under Ext.P10, subject to the conditions provided in Ext.P10 and also on constructing a bund of minimum 5 meter width along the periphery of the stream adjoining the boundary of the property covered under Ext.P10. In such circumstances, respondents 1 to 3 are directed to afford necessary police protection to enable the petitioner to conduct sand mining, on complying with all the conditions provided under Ext.P10, and the WPC 15956/12 9 petitioner constructing a bund of sufficient strength, with a minimum 5 meter width, separating the property covered under Ext.P10 from the adjoining stream, which flows along the boundary specified in Ext.P10. Respondents 13 and 14 shall ensure that sand mining is done only on satisfying the conditions and all only to the extent permitted in Ext.P10, without causing any environmental problem. Petition is disposed.