

**(2009) 08 KL CK 0071**

**High Court Of Kerala**

**Case No:** Writ Petition (C) . No. 23292 of 2009 (F)

Joemon Joseph

APPELLANT

Vs

State of Kerala, The District  
Collector, The Tahsildar and The  
Village Officer

RESPONDENT

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**Date of Decision:** Aug. 19, 2009

**Citation:** (2009) 4 KLT 202

**Hon'ble Judges:** V. Giri, J

**Bench:** Single Bench

**Advocate:** S. Ramesh Babu, for the Appellant; No Appearance, for the Respondent

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### **Judgement**

V. Giri, J.

Common issues arise for consideration in these writ petitions. Therefore, they have been heard together and are being disposed of by a common judgment. I will refer to the facts in W.P.(C).23292/2009 in the first instance.

2. Petitioner is in possession of a land comprised in R.S. No. 47, 46 and 45/2, Old Survey No. 130/1 of Malayattur Village. Under Ext.P2 registered document, vendor of the petitioner was an assignee under the Land Assignment Act. Initially the assignment was for the purpose of cultivating rubber in the property. Thereafter, the petitioner applied for and obtained a quarrying lease under the Kerala Minor Mineral Concession Rules, 1967 as per Ext.P3. Consent was also granted by the Director of Mining and Geology, as per Exts.P4 and P5.

3. License was applied for and obtained from the local authority and consent was obtained from the Pollution Control Board, as per Ext.P7. User of explosives was consented under Ext.P8. But the petitioner was issued Ext.P10 stop memo, by the Tahsildar stating that continued operation, is in contravention of the conditions of the patta. This has been challenged in this writ petition.

4. Learned Counsel for the petitioner submits that Tahsildar is incompetent to issue Ext.P10 nor is anything mentioned in Ext.P10 as to how the operation of the quarry is in contravention of the conditions of the patta. Notice on admission was issued in this writ petition. Learned Government Pleader on instructions, submits that the patta permits the permit holder to only effect cultivation in the property and therefore, conduct of a quarry is in contravention of the conditions of the patta.

5. Learned Counsel for the petitioner submits that a quarrying lease has been granted by the competent authority under the KMMC Rules. It cannot be said that the permit holder is still not entitled to operate the quarry.

6. It might be open for the competent authority who has granted the assignment under the Land Assignment Rules, to revoke assignment if the conditions of assignment are satisfied. But that could be done only by the authority which has granted the assignment. Tahsildar would not be competent to do so.

7. A quarrying lease is granted by the Director of Mining and Geology. It might be open to the Director of Mining and Geology also to take steps to suspend operations in a quarry provided the said action is authorized by the provisions of the KMMC Rules. That has also not been done.

8. Learned Government Pleader submits that Ext.P9 is only provisional. This may be so. But it does not contain any reasons.

9. In the circumstances, it is directed that Ext.P9 shall be treated as show cause notice. It will be open to the petitioner to question the authority of the author of Ext.P9 also and take up other contentions, in rebuttal of Ext.P9. Final order on Ext.P9 shall therefore, be passed by the Tahasildar and if he finds himself incompetent to deal with the issue, papers shall be forwarded to the competent authority who shall pass such order, after considering the petitioner"s objections and after hearing him also, within three weeks from the date of receipt of a copy of this judgment. Needless to say, the restriction in Ext.P9 shall not apply since the same has been directed to be treated as show cause notice. It is clarified that this will not stand in the way of any other competent authority, taking steps to stop the quarrying operations, if it is so authorized under the provisions of either the Land Assignment Act or the KMMC Rules. It is further clarified that the Government or any other competent authority acting at the instance of the Government, would be entitled to take such steps as are necessary to see that the conditions under which the assignment was granted are not contravened by the petitioner. The aforementioned directions are applicable to W.P.(C).23302/2009 as well.

Writ petitions are disposed of as above.