

(2008) 11 KL CK 0050

High Court Of Kerala

Case No: Writ Petition (C) No. 24247 of 2008

Construction Material Movers
Association and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision: Nov. 10, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 149
- Kerala Minor Minerals Concession Rules, 1967 - Rule 12, 3, 48A, 61
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 10, 11, 12, 13, 14

Citation: (2008) 3 KLJ 868

Hon'ble Judges: M.C. Hari Rani, J; K. Balakrishnan Nair, J

Bench: Division Bench

Advocate: V.M. Krishnakumar and P.A. Anitha, for the Appellant; Benjamin Paul, Sr. Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

K. Balakrishnan Nair, J.

The Petitioners have approached this Court alleging, inter alia, harassment of police, when they transport ordinary earth used for land filling. The 1st Petitioner is Construction Material Movers Association. The Petitioners 2 to 11 are the members of the 1st Petitioner. They are owners/operators of goods carriages, which are mainly used for carrying construction materials. When they are transporting red earth used for filling plots, where constructions are proposed to be undertaken, the revenue and police officials are interfering and restraining their vehicles. They say, for excavation and transporting of red earth, Government sanction is not necessary. They rely on Ext. P-5 judgment of this Court, in support of that submission. They submit, the vehicles are seized by the revenue and police officials and thereafter released, imposing a fine upto Rs. 40,000. Ext. P-6 is a receipt issued by the

Tahsildar, Thrissur, levying a fine of Rs. 40,000 and Ext. P-7 is a receipt issued by the Sub Inspector of Police, Irinjalakuda, levying a fine of Rs. 2,000. The Petitioners contend, such actions of the authorities are ultra vires and unauthorised.

2. The Petitioners point out that, as per Ext. P-8 notification, the Central Government have included ordinary earth used for land filling in the definition of "Minor Mineral" in the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act"). Even after the coming into force of Ext. P-8, the State Government have decided that ordinary earth need not be included in the Schedule to the Kerala Minor Mineral Concession Rules, 1967 (hereinafter referred to as "the Rules"). That is evident from Ext. P-10 communication dated 18-3-2006. The Government, by the said communication, informed the Director of Mining and Geology that the proposal to amend the Schedule to the Rules, to fix royalty for ordinary earth in tune with Ext. P-8 amendment has been dropped. The Petitioners also submit that the Geologist of Ernakulam District has issued Ext. P-11 communication, stating that the permission of the Department of Mining and Geology is not necessary for removing red earth. So, without any statutory power, the revenue and police officials are interfering with the transport of red earth. Therefore, the Petitioners seek the following reliefs in this writ petition.

I. Issue a writ in the nature of mandamus commanding the Respondents 2 to 13 not to seize the vehicles of the respective Petitioners and impose fine for the reason that they are transporting ordinary earth.

I (a) in the alternative issue a writ in the nature of mandamus commanding the 14th Respondent to accept the applications, filed by the Petitioners, filed under the Minor Mineral Concession Rules for permission to transport ordinary earth and consider the same on merits, treating that ordinary earth is a minor mineral.

3. The 2nd Respondent District Collector has filed a counter-affidavit, resisting the prayers in the Writ Petition. It is submitted therein that after the issuance of Exhibit P-8 notification, no mining operation to win red earth can be undertaken, in view of Section 4 of the Act, without necessary permit/lease. Special reference is made to Sub-sections (1) and (1A) of Section 4 of the said Act. Since ordinary earth is declared as a minor mineral, sanction is necessary for transporting ordinary earth in lorries. As the first Petitioner and its members are transporting ordinary earth in lorries without permission, action is being taken. Therefore, the 2nd Respondent prayed for dismissal of the Writ Petition.

4. The 13th Respondent Circle Inspector of Police, Cherpu has filed a statement. In that statement, it is submitted that on 6-8-2008 vehicles bearing registration Nos. KL-17-C-1888, KL-10/K-4417, KL-08/AE-979, KL-45/5829, KL-Q2/N-4966, KL-08/AG-7047, KL-4/3774, KL-7/AZ-9952 and KL-07/AK-4249 were seized from Kodannur, as they were found carrying ordinary earth removed from Aikunnu. The 13th Respondent denies the allegations of seizing other vehicles of the Petitioners.

Removal of ordinary earth from Aikunnu in Venginissery Village has been prohibited by the District Collector, as per Annexure R-13(a) order dated 25-6-2007. As per that order, all excavations including removal of soil from Aikunnu (Pandavagiri) were prohibited by the District Collector. The said Respondent further submitted that even after the issuance of Annexure R-13(a) prohibition order, soil was being removed from Aikunnu by real estate mafia for filling paddy fields and conversion of vast areas of wet land into residential plots continued unabated. Therefore, the District Collector ordered the formation of a special team to check the activities of the real estate mafia, as per Annexure R-13(b) order dated 31-12-2007. The special team consisted of the Secretary, Paralam Grama Panchayat, Additional Tahsildar, Thrissur, Circle Inspector of Police, Cherpu and Geologist, Thrissur. In the wake of the formation of the above special team, the police intensified action against the vehicles used for removing ordinary earth from Pandavagiri. Upon receipt of an information regarding removal of ordinary earth, the Circle Inspector of Police, Cherpu reached Aikunnu area on 6-8-2008, seized the vehicles and the JCB used for excavation of soil and removed them to the Police Station. The matter was reported to the Revenue Divisional Officer, who in turn, imposed a fine and released the vehicles, after realisation of the fine amount. The 13th Respondent denied the allegations of the Petitioners that he had harassed them or seized their vehicles illegally.

5. The Petitioners have filed a reply affidavit, dealing with the averments in the counter-affidavit of the second Respondent.

6. We heard Mr. V.M. Krishnakumar, learned Counsel for the Petitioners and also the learned Senior Government Pleader Mr. Benjamin Paul, for the official Respondents.

7. The learned Counsel for the Petitioners, relying on Exhibit P-5 judgment submitted that, for removal of earth, no permission from the Government is necessary. He also relied on the observation of this Court in *Thilakan v. Circle Inspector of Police* 2008 (1) KLT 141 that there may not be any law prohibiting removal of ordinary earth. The learned Counsel submitted that by virtue of Section 14 of the Mines and Minerals (Development and Regulation) Act, 1957, Sections 5 - 13 thereof shall not apply to minor minerals. Section 15 authorises the State Governments to make rules in respect of minor minerals. In exercise of that power, Kerala Minor Mineral Concession Rules, 1967 have been framed. Since ordinary earth is not included in the Schedule I to the Kerala Minor Mineral Concession Rules, the provisions regarding dealer's licence, etc., are not applicable to ordinary earth, it is submitted. Reference is made to Rule 48 A of the Rules. Going by that Rule, no person shall stock, sell or offer for sale any minor mineral, other than a quarrying permit holder or a quarrying lease holder, mentioned in Schedule I without the dealer's licence. Therefore, it is submitted that the action of the police and revenue officials in interfering with the transporting of ordinary earth is ultra vires and unauthorised.

8. The learned Government Pleader fully supported the actions of the authorities, relying on Exhibit P-8 notification.

9. We notice that Exhibit P-5 judgment is rendered without adverting to Exhibit P-8 notification. So, the said decision cannot be treated as an authority for the proposition that ordinary earth can be dealt with without any licence or permission from anybody. The observation, relied on by the Petitioners, of this Court in *Thilakan v. State of Kerala*, mentioned above, was made, as both sides did not bring to the notice of this Court, the existence of Exhibit P-8 notification.

10. Minor mineral is defined in Section 3(e) of the Act as follows:

3(e): "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

In exercise of the power conferred under the above provision, the Central Government have issued Exhibit P-8 notification. The said notification reads as follows:

In exercise of the powers conferred by Clause (e) of Section 3 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby declares the "ordinary earth" used for filling or levelling purposes in construction of embankments, roads, railways, buildings to be a minor mineral in addition to the minerals already declared as minor minerals hereinbefore under the said clause.

So, now, the ordinary earth transported by the Petitioners is a minor mineral. Therefore, the restrictions contained in Section 4(1) regarding the mining of minerals will apply to ordinary earth also. Sub-section (1A) of Section 4 prohibits transporting or storing of minor minerals otherwise than in accordance with the provisions of the Act and the Rules made there under. The relevant portion of Section 4 reads as follows:

4. Prospecting or mining operations to be under licence or lease.- (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the Rules made there under:

* * * * *

(1A). No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the Rules made there under.

Since minerals include minor mineral also, the restrictions contained in Section 4 of the Act will apply to minor minerals also. Though the definition of minor mineral was amended, incorporating ordinary earth also as per Exhibit P-8, Schedule I to the Kerala Minor Mineral Concession Rules, was not amended. Exhibit P-10 would show that the Government did not intend to levy any royalty for ordinary earth. Therefore, ordinary earth is not included in Schedule I of the Rules. But, its non-inclusion has other ramifications. The definition of "dealer" contained in Rule 3(xiii) of the Kerala Minor Mineral Concession Rules says that "dealer" means a person carrying on the business of selling minor minerals mentioned in Schedule I of these Rules, whether wholesale or retail. Rule 48A of the said Rules reads as follows:

License for a dealer.- No person, other than a quarrying permit or a quarrying lease holder, shall stock, sell or offer for sale any minor minerals mentioned in Schedule I in any place in the State, except under a dealer's licence issued under the seal and signature of the competent authority, if Government have issued no notification to that effect in the case of any minor mineral in the whole State or in any particular area.

The above Rule would show that if a person is not having quarrying permit or quarrying lease for ordinary earth, he can stock and sell minor minerals mentioned in Schedule I, only under the dealer's licence issued by the competent authority. Since ordinary earth is not included in the said Schedule to the Rules, the provisions of Chapter VII A of the Rules are not applicable to ordinary earth. But, the provisions contained in Chapter III of the Kerala Minor Mineral Concession Rules, dealing with the grant of quarrying permit, will apply to quarrying of ordinary earth from private lands. Rule 12 of the Rules under Chapter III enables the competent authority to prohibit quarrying operations. Section 4(1A) prohibits transporting and storing of minerals, including minor minerals otherwise than in accordance with the provisions of the Act and Rules made there under. So, the contention of the Petitioners that quarrying and transporting of ordinary earth can be done by anyone, without any licence, in any manner, cannot be accepted. The decision of the Government not to include ordinary earth in the Schedule, though the intention was not to collect any royalty, has created practical hurdles to some extent, in dealing with the illegal transportation of ordinary earth. But, we are not inclined to hold that the authorities are absolutely powerless in the matter of controlling quarrying and transporting of ordinary earth. Section 21 of the Act provides a punishment of imprisonment for two years or fine, which may extend to twenty five thousand rupees or both for violation of Sub-sections (1) and (1A) of Section 4. For unauthorised transport of minerals including minor mineral, the vehicles involved can be seized, which may be confiscated by the competent criminal Court. The violations of Sub-sections (1) and (1A) of Section 4 of the Act are cognizable offences, by virtue of Section 21(6) of the Act. Section 22 says that the criminal Court shall take cognizance of any offence punishable under the Act or Rules only on a complaint made in writing by a person authorised in this behalf by the Central or State Government. The State Government

have issued a notification u/s 22 of the Act, as per S.R.O. No. 827/91 published in Kerala Gazette (Extraordinary) No. 796 dated 26-6-1991, authorising all District Collectors and all Police Officers of and above the rank of Sub Inspector, apart from Geologists, in their respective jurisdiction, to act as the competent authority u/s 22. Section 23A of the Act enables such authorised Officers to compound any offence punishable under the Act on payment of a sum that the said authority may specify. In the above statutory setting, which would show that the actions of the authorities cannot be described as totally without jurisdiction, the reliefs sought by the Petitioners have to be examined.

11. The prayers of the Petitioners are two fold. The first prayer is that the revenue and police officials may be restrained from seizing their vehicles. The second prayer is to consider their applications, when submitted to the Geologist for grant of permission to transport ordinary earth. The 13th Respondent in his statement has denied the allegations of harassment made against the police. He also pointed out that the vehicles were seized on a day, because of the absence of any permission from the authorities for mining and transportation of ordinary earth and also on account of the prohibition imposed under Annexure R-13(a). If the police have acted to prevent removal of ordinary earth from Aikunnu, in the light of Annexure R-13(b) order issued by the District Collector, the same cannot be described as harassment of the Petitioners. Rule 12 of the Rules authorises the Collector to issue an order in the nature of Annexure R-13(b).

12. Violations of Sub-sections (1) and (1A) of Section 4 of the Act being cognizable offences, as per Section 21(6) of the Act, the police can take preventive action u/s 149 of the Code of Criminal Procedure to prevent the commission of those offences. Apart from that, Rule 61 of the Kerala Minor Mineral Concession Rules speaks about the role of the police in assisting the competent authority or the officer authorised by the Rules to discharge his functions. The said Rule reads as follows:

61. Role of Police.- The competent authority or an officer authorised by it in this behalf, shall if necessary request in writing for the help of the local police and the police authorities shall render such assistance as is necessary to enable the officer to exercise the powers conferred on it or him by these Rules in the matter of stopping illicit mining and preventing unauthorised movement of minerals.

So, if the police act as directed by the District Collector, this Court cannot interfere with the same, calling it as police harassment. The 2nd Respondent District Collector has denied the allegation of the Petitioners regarding harassment by the Revenue Officials. It is submitted by the said Respondent that the Revenue Officials are taking action for violation of Section 4(1A) of the Act. If that be so, we cannot interfere with the action of the Revenue Officials. Further, in view of the disputed facts, it is not possible to issue any general direction against the authorities. The members of the 1st Petitioner may work out their remedies against the specific actions taken against them.

13. The second prayer also cannot be granted, as the same is anticipatory in nature. The Petitioners should first apply and if their applications are not considered or wrongly rejected, then only the Petitioners get cause of action to approach this Court in that matter. Now, on the ground that the Petitioners propose to move for permission, this Court cannot issue any mandamus anticipating breach of duty from the part of the official Respondents.

In the result, the Writ Petition fails and it is dismissed.