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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 2ND DAY OF JULY 2024 / 11TH ASHADHA, 1946

WP(C) NO. 31162 OF 2018

PETITIONER:

MATHEW PHILIP
KANIVELIL HOUSE, MUTTUCHIRA P.O, KOTTAYAM-686613
BY ADVS.
JOMY GEORGE
DEEPAK MOHAN

RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001
2 THE PRINCIPAL SECRETARY, INDUSTRIAL (A) DEPARTMENT, THIRUVANANTHAPURAM-695 001
3 DEPUTY SECRETARY, APPELLATE AUTHORITY, INDUSTRIAL (A) DEPARTMENT, THIRUVANANTHAPURAM - 695 001
4 THE DISTRICT COLLECTOR COLLECTORATE, KOTTAYAM - 686 002
5 THE DEPUTY COLLECTOR (LR) COLLECTORATE, KOTTAYAM - 686 002
6 GEOLOGIST DEPARTMENT OF MINING AND GEOLOGY, DISTRICT OFFICE, KOTTAYAM - 686 613
7 REVENUE DIVISIONAL OFFICER PALA, KOTTAYAM DISTRICT - 686 575.
8 TAHSILDHAR TALUK OFFICE, VAIKOM, KOTTAYAM DISTRICT - 686 141
9 VILLAGE OFFICE, MUTTUCHIRA VILLAGE, MUVATTUPUZHA P.O., KOTTAYAM DISTRICT - 686 670

BY ADV. SRI.B.S.SYAMANTAK, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J.

W.P.(C) No. 31162 of 2018

Dated this the 02nd day of July, 2024

JUDGMENT

Justice delayed is not a violation of rights alone, but also a threat to the very fabric of the society. The delay of justice is a betrayal of the trust placed in the legal system. This is a strange case in which a statutory authority took 6 months to pass an order in an appeal after concluding the hearing of the parties in the appeal. The hearing in this case was conducted by the second respondent in an appeal filed as per the provisions of the Kerala Minor Mineral Concession Rules, 2015 (for short, 'Rules 2015') on 23.11.2017. Thereafter, the orders are passed by the appellate authority after about 6 months from the date of the conclusion of the hearing. Whether

such an order can be sustained is the question to be decided in this case.

2. Petitioner is the owner of a land having an extent of 52 ares comprised in Sy.No.792/9 and 793/3A of Muttuchira Village, Vaikkom Taluk, Kottayam District. According to the petitioner, the illegal mining of red earth was being carried out in the properties near the petitioner's property, and the petitioner has no connection with the same. The tipper lorries of the persons carrying on the illegal mining were parked in the property of the petitioner, waiting their turn to load the red earth, is the submission. According to the petitioner, he is residing in a far away place from this property, and he purchased the property in 2005, after that he had not extracted any minor mineral from his property. According to the petitioner, he was doing only agricultural operations in the property. Ext.P1 is the Mahazar prepared by the 9th respondent while confiscating the vehicles from the property. The petitioner obtained Ext.P1 under the Right

to Information Act. It is submitted by the petitioner that as per Ext.P1, the allegation is that the petitioner has tried to remove red earth from his property. On the basis of Ext.P1, the 4th respondent by Ext.P2 order, directed the Department of Geology to ascertain whether any red earth was removed from the property of the petitioner and if so, to levy and collect the royalty and the fine amount for the same from the petitioner. Though in Ext.P1 Mahazar, the allegation is that red earth is being removed from the property of the petitioner, the 4th respondent in his order has stated that quarrying was done with regard to laterite stone also. According to the petitioner, in Ext.P2 there is no finding by the 4th respondent that the petitioner had excavated or done any mining operation in his property. What the 4th respondent had directed is only to ascertain whether any mining was done in the property, is the submission. The 4th respondent proceeded and passed Ext.P2 order on the presumption that since the 7th respondent had seized the vehicles from the property of

the petitioner there was mining in the property of the petitioner, is the submission of the petitioner. It is also submitted that the vehicles were confiscated by the 9th respondent and not by the 7th respondent. The 7th respondent was not available anywhere in the scene while the vehicles were confiscated by the 9th respondent, is the submission. According to the petitioner, 9th respondent is not the competent authority for seizing and confiscating the vehicles under the Rules, 2015 and hence the entire proceedings initiated against the petitioner on the basis of Ext.P1 are illegal, void and without any jurisdiction. It is submitted that the petitioner purchased the property in the year 2005 and after that, no excavation or mining was conducted in his property. Subsequently, the 6th respondent on 21.10.2015 issued a demand notice to the petitioner demanding an amount of Rs.2,45,788/- as royalty and fine from the petitioner. Though the direction in Ext.P2 was to conduct an inspection and to ascertain whether any earth was removed from the property of the

petitioner, the 6th respondent without issuing any notice to the petitioner and without conducting any enquiry and without seeking any explanation from the petitioner came to the conclusion that the petitioner had removed laterite stone and earth from his property is the grievance of the petitioner. Ext.P3 is the demand notice.

3. It is further submitted by the petitioner that before issuing Ext.P3, the 6th respondent sought clarification from the 9th respondent regarding the period in which the mining was done by the petitioner as evident by Ext.P4. As per Ext.P5, the 6th respondent sought clarification from the 9th respondent in this regard. According to the petitioner, from Exts.P4 and P5, it is clear that the 6th respondent is not sure about the period in which the alleged mining was done in the property. This fortifies the contention of the petitioner that mining if any, was done before 2005, the year in which the petitioner had purchased the property, is the submission.

4. Challenging Ext.P5, the petitioner filed an

appeal before the 3rd respondent and the 3rd respondent as per Ext.P6 order dismissed the same. It is submitted that, as per paragraphs No.4 and 5 of Ext.P6, it can be seen that the 1st appellate authority also found that there is some merit in the contention of the petitioner. Therefore, the 3rd respondent issued an order directing the 6th respondent and the Director of Mining and Geology to again inspect the property and submitted a report. But, the 6th respondent failed to comply with the order and submit a report stating that the inspection of the property is not possible due to the agricultural operation in the property. Therefore, it is submitted that, at no point of time, the petitioner got an opportunity to prove that no mining operation was done in his property. After that, instead of allowing the appeal, the 3rd respondent by Ext.P6 dismissed the appeal. Challenging Ext.P6, the petitioner filed appeal before the 2nd respondent as evident by Ext.P7. The 2nd respondent also refused to interfere with the matter and dismissed the appeal as per

Ext.P8. Thereafter, Ext.P9 demand notice was issued to recover the amount. Aggrieved by the same, this writ petition is filed with following prayers :

> *a) "Issue a writ of certiorari or any other appropriate writ, order or direction quashing Exhibits P3, P6 and P8 orders passed by the 2nd respondent.*
>
> *b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to re-inspect the petitioner's property and pass orders after hearing the petitioner.*
>
> *c) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 4th respondent to conduct a proper enquiry and hear the petitioner and also give him an opportunity to adduce evidence.*
>
> *d) Pass such other order or direction as deem fit to the facts and circumstances of the case." [sic]*

5. Heard the learned counsel for the petitioner and the learned Government Pleader.

6. This Court perused Ext.P8 order passed by the appellate authority. A perusal of Ext.P8 order would show that the hearing of the appeal was conducted on 23.11.2017. Thereafter, the appellate authority passed Ext.P8 order on 07.06.2018. That means the gap between

the hearing and the date of order in the appeal is more than six months. Whether such practice can be allowed is the question. Delay in passing orders after concluding the hearing can lead to prejudice in several ways. It amounts to denial of justice, loss of credibility, evidence degradation, undue threat and anxiety to the parties and loss of public trust. Long delay can damage the public perceptions of the authorities' efficiency and effectiveness. Delayed orders can hinder the timely resolution of disputes causing undue hardships to parties involved. The authorities' credibility may suffer if decisions are consistently delayed, eroding trust in the process. Appellate authorities are constituted with human beings. If there is a long delay in passing orders after the hearing, the memories may fade, evidence may be lost and of course, making it harder to enforce the decision. Moreover, the parties may incur additional costs due to the delay, such as expenses related to prolonging the process. Delayed decisions can cause significant stress

and anxiety for those affected, particularly in matters involving personal or financial things. Delayed orders can create uncertainty making it challenging for parties to move forward with their lives or business. Moreover, delayed decisions can lead to complications in the appeal and review process potentially causing further delay.

7. *'Justice delayed is justice denied'* is a famous quoting of William E. Gladstone. It is usually said that, *'Delay is a weapon used by the powerful to defeat the weak'*. Justice is not only delayed but also denied when passing final orders are postponed indefinitely. Therefore, a delay in justice is a defeat for justice. If the delay is longer, prejudice to the parties is immeasurable.

8. As I mentioned earlier, in this case, after hearing the parties on 23.11.2017, the appellate authority passed Ext.P8 order on 07.06.2018. If this practice is continued, there will be far reaching consequences and the faith of the public in the decision making by the statutory authorities will be lost. Therefore, I am of the considered

opinion that the statutory authorities while passing final orders in appeal, revision and other proceedings after conclusion of hearing, a time limit should be followed. Even for constitutional courts, the Apex Court fixed a time limit for pronouncing judgment, after reserving the case for judgment (See **Anil Rai V. State of Bihar (2001 KHC 858**). Therefore a time limit for passing final orders after the hearing is completed by the statutory authorities can be fixed till a proper rule/guideline is prescribed by the State Government. The following guidelines should be followed by all statutory authorities constituted as per the provisions of all statutes, rules etc in the State while considering appeal, revision, and other statutory applications/petitions etc:-

(a) After the hearing is concluded in appeals, revisions and other statutory proceedings, the statutory authorities should pass final orders as expeditiously as possible, at any rate, within 30

days from the date of concluding the hearing.

(b) If there is a delay in passing final orders beyond one month after concluding the hearing, the order should reflect the reason for the delay. The reason can be considered by the higher authorities to find out whether there is any prejudice to the parties because of the delay. If no proper reason is mentioned and there is prejudice to the parties because of the delay, that itself is a reason to set aside that order.

(c) If no orders are passed in appeal, revision or other proceedings within three months after concluding the hearing, the appellate authority, revisional authority and other statutory authorities should rehear the parties for passing final orders. Otherwise, the order passed by such authority can be set aside for that reason

itself unless there are compelling reasons to sustain the same.

(d) If orders are passed in appeal, revision or other proceedings after six months from the date of concluding the hearing by the appellate authority, revisional authority and other statutory authorities, those orders are to be set aside for that reason alone, unless there are compelling reasons to sustain such orders.

9. I am of the considered opinion that such a practice should be followed by all statutory authorities in the State. The Chief Secretary of the State should issue necessary orders in this regard within one month from the date of receipt of a copy of this judgement and circulate it to all heads of departments. The Chief Secretary shall also undertake necessary measures to ensure that the general public is made aware of the same. A copy of this judgment shall be forwarded to the Chief Secretary for

issuing necessary orders in this regard by the registry forthwith.

10. The counsel for the petitioner also submitted that Ext.P3 order passed by the 6th respondent is without following the principles laid down by this Court in ***Biju K. Varghese v. Geologist, Mining and Geologist Department, District Office, Cherthala (2020 (6) KHC 450)***. It will be better to extract the relevant portion of the above judgment.

> *"9. Reverting to the facts, notice dated 11.06.2019 issued by the first respondent to the petitioner before Ext.P3 order reads thus:*
>
> *"മാവേലിക്കര താലൂക്കിൽ വെട്ടിയാർ വില്ലേജിൽ ബ്ലോക്ക് നമ്പർ 6 ൽ റീസർവ്വേ നമ്പർ 384/12-1, 12-4, 12-5-2, 12-2, 12-3, എന്നിവയിൽപ്പെട്ടതും താങ്കളുടെ ഉടമസ്ഥതയിലുള്ളതുമായ സ്ഥലത്തു നിന്നു അനധികൃതമായി സാധാരണ മണ്ണ് ഖനനം ചെയ്ത് നീക്കം ചെയ്തതായ സൂചന 1 റിപ്പോർട്ടിന്റെ അടിസ്ഥാനത്തിൽ നടത്തിയ സൂചന 2 സ്ഥലപരിശോധനയിൽ ആയത് ബോദ്ധ്യപ്പെട്ടിട്ടുള്ളതും അളന്നു തിട്ടപ്പെടുത്തിയിട്ടുള്ളതുമാണ്. അനധികൃത ധാതുഖനനവും കടത്തു സൂചന ചട്ടങ്ങൾ പ്രകാരം കുറ്റകരവും ശിക്ഷാർഹവുമാണ്. ടി അനധികൃത ഖനനത്തിനെതിരെ സൂചന 3 ചട്ടങ്ങൾ പ്രകാരം നടപടി സ്വീകരിക്കാതിരിക്കാൻതക്ക കാരണമുണ്ടെങ്കിൽ ആയതു 26.06.2019 ന് മുമ്പായി ഈ*

ആഫീസിൽ നേരിട്ട ഹാജരായി രേഖാമൂലം ബോധിപ്പിക്കേണ്ടതാണ്. അല്ലാത്ത പക്ഷം ഇനിയൊരറിയിപ്പുകൂടാതെ താങ്കൾക്കെതിരെ നിയമനടപടി സ്വീകരിക്കുന്നതാണ്.

As evident from the notice, though the same refers to the act which constitutes the breach of law attracting adverse action, the first respondent has not disclosed the quantity of ordinary earth stated to have been removed by the petitioner from the land. The notice does not indicate the particulars of the action proposed against the petitioner, precisely the power that is proposed to be invoked for the same. As regards the action proposed, the notice is vague and ambiguous inasmuch as it only says that action will be taken against the petitioner under law. In a case of this nature, according to me, there shall be an inspection of the property by the competent authority with notice to the indictee. A mahazar of the land from where earth was removed, with sufficient particulars so as to enable one to ascertain the quantity of the earth removed shall be prepared. The notice should certainly refer to the mahazar. It should state the quantity of the earth removed, the nature of the action proposed, the particulars of the dues to be recovered and also the power invoked for the same. If the aforesaid particulars are not furnished to the party concerned in the notice, I have no doubt that in our social scenario, the orders would be received by surprise

> by the party concerned. Insofar as the notice aforesaid does not contain the necessary particulars, it has to be found necessarily that the same does not conform to the requirements of the principles of natural justice."

11. The above principle is not followed by the 6th respondent before passing orders. Upshot of the above discussion is that the impugned orders in this writ petition are to be quashed and the matter is to be reconsidered by the 6th respondent.

Therefore, this writ petition is disposed of with following directions:

1. Exts.P3, P6, P8 and P9 are quashed.
2. The 6th respondent is directed to reconsider the matter in the light of the principle laid down by this Court in **Biju K. Varghese v. Geologist, Mining and Geologist Department, District Office, Cherthala** [2020 (6) KHC 450].

3. Registry will forward a copy of this judgment to the Chief Secretary, State of Kerala, for issuing necessary orders as directed in paragraphs 7 to 9 of this judgment.

sd/-

P.V.KUNHIKRISHNAN
JUDGE

DM/SKS/sbna/bng/JV

APPENDIX OF WP(C) 31162/2018

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE MAHAZER DATED 27.08.2013 PREPARED BY THE 9TH RESPONDENT.**
EXHIBIT P2	**TRUE COPY OF THE ORDER DATED 10.09.2013 PASSED BY THE 4TH RESPONDENT.**
EXHIBIT P3	**TRUE COPY OF THE NOTICE DATED 21.10.2015 ISSUED BY THE 6TH RESPONDENT TO THE PETITIONER.**
EXHIBIT P4	**TRUE COPY OF THE LETTER DATED 16.11.2013 SENT BY THE 6TH RESPONDENT TO THE 9TH RESPONDENT.**
EXHIBIT P5	**TRUE COPY OF THE CLARIFICATION SOUGHT BY THE 6TH RESPONDENT FROM THE 9TH RESPONDENT ON 22.12.2014.**
EXHIBIT P6	**TRUE COPY OF THE ORDER DATED 24.1.2018 PASSED BY THE 3RD RESPONDENT.**
EXHIBIT P7	**TRUE COPY OF THE APPEAL DATED 27.02.2018 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**
EXHIBIT P8	**TRUE COPY OF THE ORDER DATED 07.06.2018 PASSED BY THE 2ND RESPONDENT.**
EXHIBIT P9	**TRUE COPY OF THE DEMAND NOTICE DATED 16.04.2018 SENT BY THE 6TH RESPONDENT TO THE PETITIONER.**

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//
PA TO JUDGE