



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 3549 OF 2023

PETITIONERS:

- 1 P.K. SASI,
AGED 54 YEARS
S/O. KUNJAPPAN, PUTHENBHAGATH,
EZHAKKARANAD P.O., PUTHENCROUZ (VIA),
ERNAKULAM DISTRICT, PIN- 682308.
- 2 RAVI P.K.,
AGED 52 YEARS
S/O KUNJAPPAN, PUTHENBHAGATH
C/O THEKKUMALAYIL, EZHAKKARANAD P.O.,
PUTHENCROUZ (VIA),
ERNAKULAM DISTRICT, PIN- 682308.
- 3 RAJAPPAN T.C.,
AGED 49 YEARS
S/O. CHOOTHY, THEKKUMALAYIL,
EZHAKKARANAD P.O., PUTHENCROUZ (VIA),
ERNAKULAM DISTRICT, PIN- 682308.
- 4 T.C. CHANDRAN,
AGED 63 YEARS
S/O. CHEERAN, THEKKUMALAYIL,
EZHAKKARANAD P.O., PUTHENCROUZ (VIA),
ERNAKULAM DISTRICT, PIN- 682308.

BY ADVS.
PAUL ABRAHAM VAKKANAL
ABRAHAM VAKKANAL (SR.)
VINEETHA SUSAN THOMAS
ROHITH C.

RESPONDENTS:

- 1 STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(SEIAA),
REPRESENTED BY ITS MEMBER SECRETARY, 4TH FLOOR,
KSRTC BUS TERMINAL BUILDING, THAMPANOR,
THIRUVANANTHAPURAM, PIN- 685001.



W.P.(C) No.3549/2023 & connected cases

: 2 :

- 2 MANEED GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
MANEED P. O.,
ERNAKULAM DISTRICT, PIN- 686664.
- 3 SECRETARY,
MANEED GRAMA PANCHAYAT, MANEED P. O.,
ERNAKULAM DISTRICT, PIN- 686664.
- 4 THE GEOLOGIST,
DISTRICT OFFICE, DEPARTMENT OF MINING &
GEOLOGY, CIVIL STATION, KAKKANADU P.O.,
KOCHI, PIN- 682030.
- 5 KERALA STATE BIODIVERSITY BOARD,
REPRESENTED BY ITS MEMBER SECRETARY,
BELHAVEN E ST, BELHAVEN GARDENS, NANTHANCODU,
THIRUVANANTHAPURAM, PIN- 695003.
- 6 KERALA STATE COMMISSION FOR SC AND ST,
REPRESENTED BY ITS MEMBER SECRETARY,
AYYANKALI BHAVAN, KANAKA NAGAR, KOWDIAR.P.O.,
THIRUVANANTHAPURAM, PIN- 695003.
- 7 DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD,
ERNAKULAM, PIN- 682030.
- 8 DISTRICT POLICE CHIEF,
ERNAKULAM (RURAL), OPPOSITE POWER HOUSE,
ALUVA, ERNAKULAM, PIN- 683101.
- 9 STATION HOUSE OFFICER,
RAMAMANGALAM POLICE STATION,
ERNAKULAM DISTRICT, PIN- 686663.
- 10 ORIENTAL STRUCTURAL ENGINEERS PRIVATE LIMITED,
KANNANPARAMBU HOUSE, VAZHICULANGARA,
NORTH PARAVUR, ERNAKULAM DISTRICT, PIN- 683513,
REPRESENTED BY JOINT PROJECT DIRECTOR, A.K.JHA
- 11 B. M. SALIM,
S/O B. K.MUHAMMED, 36/2150A,
SHENOY'S ROAD, KALOOR, KOCHI, PIN- 682017.
- 12 SAJNA SALIM,
D/O. MAJEED, 36/2150A, SHENOY'S ROAD,
KALOOR, KOCHI, PIN- 682017.
- 13 ADDL. R13. ABHILASHKUMAR P.T.,
S/O THANKAPPAN, AGED 40 YEARS,
PUTHENBHAGATH HOUSE, EZHAKKARANAD P.O.,
PUTHENCRUZE (VIA),
ERNAKULAM DISTRICT, PIN-682 308.



W.P.(C) No.3549/2023 & connected cases

: 3 :

- 14 ADDL. R14. RAJAN V.N.,
S/O NARAYANAN, AGED 63 YEARS,
VETTITHARAMATTATHIL HOUSE,
EZHAKKARANAD P.O, PUTHENCROUZE (VIA),
ERNAKULAM DISTRICT, PIN-682308.
- 15 ADDL. R15. VARGHESE ULAHANNAN,
S/O. ULAHANNAN, AGED 77 YEARS,
KOCHUPURACKAL HOUSE, EZHAKKARANAD P.O.,
PUTHENCROUZE (VIA),
ERNAKULAM DISTRICT, PIN-682308.
- 16 ADDL. R16. BIJU T.V.,
S/O. VARKEY, AGED 47 YEARS, THAVALACHALIL
HOUSE, EZHAKKARANAD P.O., PUTHENCROUZE (VIA),
ERNAKULAM DISTRICT, PIN - 682308.
- 17 ADDL. R17. SAJI T.T,
S/O THANKAPPAN, AGED 46 YEARS, THEKKUMALAYIL
HOUSE, EZHAKKARANAD P.O., PUTHENCROUZE (VIA),
ERNAKULAM DISTRICT, PIN-682308.
- 18 ADDL.R18. K.M.PAILY,
S/O. MATHAI, AGED 67 YEARS, KAILAPURATH HOUSE,
EZHAKKARANAD P.O., PUTHENCROUZE (VIA),
ERNAKULAM DISTRICT, PIN-682308.

(ADDL. R13 TO R18 IMPEDED AS PER ORDER DATED
06.02.2023 IN I.A. NO.1/2023)

- 19 ADDL. R19. THE PROJECT DIRECTOR,
PROJECT IMPLEMENTATION UNIT, MAVELIPURAM,
THRIKKAKARA, KAKKANAD, KERALA, PIN- 682030,

(ADDL.R19 IS IMPEDED AS PER ORDER DATED
14.02.2023 IN I.A. NO. 2/2023)



W.P.(C) No.3549/2023 & connected cases
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BY ADVS.
M.P.SREEKRISHNAN, SC
SUNU P.JOHN
NAVEEN.T, SC, KERALA STATE BIODIVERSITY BOARD
SMT.MARY BENJAMIN, SC, ADMISSION SUPERVISORY
COMMITTEE FOR PROF. COLLEGES
MANU ROY
M.M.MONAYE
E.C.KURIAKOSE
M.PAUL VARGHESE
K.V.SANOSH
ANJANA SUGUNAN
LEJO JOSEPH GEORGE
IRFAN ZIRAJ
SRI.S.KANNAN, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 17.10.2023, ALONG WITH WP(C).11526/2023,
15258/2023 AND CONNECTED CASES, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



W.P.(C) No.3549/2023 & connected cases
: 5 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 11526 OF 2023

PETITIONER:

M/S. KUTTICKAL CONSTRUCTIONS
REP BY ITS PROPRIETOR OFFICE NO: 131/A/8 -
THOTTAPPALLY P.O, ALAPPUZHA, PIN - 690001

BY ADV JOBI JOSE KONDODY

RESPONDENTS:

- 1 DISTRICT POLICE CHIEF
SUPERINTENDEND OFFICE
ALAPPUZHA-, PIN - 690001
- 2 DEPUTY SUPERINTENDEND OF POLICE
DY.S.P OFFICE, CHENGANNUR, PIN - 689121
- 3 STATION HOUSE OFFICER
NOORNADU POLICE STATION
NOORNADU-, PIN - 690504
- 4 THE DISTRICT GEOLOGIST
DEPARTMENT OF MINING AND GEOLOGY,
MINI CIVIL STATION, CHERTHALA
ALAPPUZHA, PIN - 688524
- 5 SETHU
CHARIVILAYIL MATTAPPALLY, AASAN KALING
NOORNADU, PIN - 690504

BY ADVS.
SRI.S.KANNAN, SR.GOVERNMENT PLEADER
V.M.KRISHNAKUMAR
P.R.REENA (K/000510/1998)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 17.10.2023, ALONG WITH WP(C).3549/2023 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



W.P.(C) No.3549/2023 & connected cases
: 6 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 15258 OF 2023

PETITIONER:

THRIKKUR GRAMA PANCHAYAT
KALLUR P.O, THRISSUR DISTRICT , KERALA,
REPRESENTED BY ITS SECRETARY, DINESH M.K,
SON OF KRISHNANKUTTY, RESIDING AT MANNAMPETTA
KARUVAN HOUSE, VARKALA P.O, AMBALLUR VILLAGE,
MYKUNDHAPURAM TALUK,
THRISSUR DISTRICT, PIN - 680317

BY ADVS.
P.M.ZIRAJ
VISHNU P.S.
NIMISHA ANTONY
MOHAMMED SHEHIN.S.S
BIPIN KRISHNAKUMAR
ABHIJITH P.A.

RESPONDENTS:

- 1 THE DISTRICT GEOLOGIST
DEPARTMENT OF MINING AND GEOLOGY,
THRISSUR DISTRICT, PIN - 680020
- 2 STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
REPRESENTED BY ITS MEMBER SECRETARY,
4TH FLOOR, KSRTC BUS TERMINAL COMPLEX,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE DISTRICT COLLECTOR
THRISSUR, FIRST FLOOR, CIVIL STATION,
CIVIL LINES RD, KALYAN NAGAR, AYYANTHOLE,
THRISSUR, KERALA, PIN - 680003
- 4 THE STATION HOUSE OFFICER
PUTHUKKAD POLICE STATION,
THRISSUR DISTRICT, PIN - 680301



W.P.(C) No.3549/2023 & connected cases
: 7 :

- 5 NATIONAL HIGHWAY AUTHORITY OF INDIA
G - 586 , SECTOR - 10 , DWARAKA P.O.
NEW DELHI, REPRESENTED BY ITS CHAIRMAN,
PIN - 110075
- 6 JAMES A.R
FATHERS NAME NOT KNOWN TO THE PETITIONER,
ALANGATTUKARAN HOUSE, MAVINCHUVADU,
KALLUR P.O, THRISSUR, PIN - 680317
- 7 USHA JAMES
WIFE OF JAMES,, ALANGATTUKARAN HOUSE,
MAVINCHUVADU, KALLUR P.O,
THRISSUR, PIN - 680317

BY ADVS.
PHILIP J.VETTICKATTU
B.G.BIDAN CHANDRAN, SC
K.J.MOHAMMED ANZAR(K/122/1995)
SAJITHA GEORGE(K/497/2005)
NEENU BERNATH(K/000575/2013)
SRI.S.KANNAN, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 17.10.2023, ALONG WITH WP(C).3549/2023 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



W.P.(C) No.3549/2023 & connected cases
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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

TUESDAY, THE 17TH DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(C) NO. 20721 OF 2023

PETITIONERS:

- 1 AJAYGHOSH,
AGED 53 YEARS
S/O KARUTHAKUNJU, K.K.HOUSE, MATTAPPILLY,
NOORANADU.P.O, ALAPUZHA DIST (PANCHAYATH MEMBER
WARD NO.IV, PALAMEL GRAMAPANCHAYATH,
ALAPUZHA DISTRICT, PIN - 690504
- 2 VINODKUMAR,
AGED 46 YEARS
S/O BALAKRISHNA PILLAI, KRISHNA NIVAS,
ULAVUKKAD, NOORNAD.P.O, ALAPUZHA DIST
(PRESIDENT, PALAMEL GRAMAPANCHAYATH),
PIN - 690504
- 3 JUSTIN JACOB,
AGED 49 YEARS
S/O K.A.JACOB, KANDATHIL HOUSE, KUDASANADU.P.O,
ALAPUZHA DIST (PANCHAYATH MEMBER WARD NO.VI,
PALAMEL GRAMAPANCHAYATH, ALAPUZHA DISTRICT,
PIN - 689512
- 4 MUHAMMED ALI,
AGED 40 YEARS
S/O MEERAMOTHI, PLAVILATHEKKETHIL HOUSE,
ATHIKKATTUKULANGARA P.O. ALAPUZHA, PIN - 690504
- 5 B. ANILKUMAR,
AGED 39 YEARS
S/O BHASKARAN UNNITHAN, PUNNAKKAKULANGARA
HOUSE, ULAVUKKAD, NOORANAD, PO, ALAPUZHA DIST
(PANCHAYATH MEMBER WARD NO.III,
PALAMEL GRAMAPANCHAYATH,
ALAPUZHA DISTRICT, PIN - 690504

BY ADVS.

V.M.KRISHNAKUMAR

P.R.REENA

RENJITH THAMPAN (SR.) (K/276/1990)



W.P.(C) No.3549/2023 & connected cases
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RESPONDENTS :

- 1 NATIONAL HIGHWAY AUTHORITY OF INDIA ,
REPRESENTED BY PROJECT DIRECTOR, NO.36/414 (3) ,
NEAR NSS HIGHER SECONDARY SCHOOL, PALKULANGARA,
THIRUVANANTHAPURAM, PIN - 695024
- 2 DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
KODATHIKAVALA, CHERTHALA,
ALAPUZHA, PIN - 688524
- 3 STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(SEIAA) ,
REPRESENTED BY ITS SECRETARY, 4TH FLOOR,
KSRTC BUS TERMINAL COMPLEX, THAMPANOR,
THIRUVANANTHAPURAM, PIN - 695014
- 4 DISTRICT COLLECTOR,
COLLECTORATE, CIVIL STATION,
ALAPUZHA, PIN - 688001
- 5 M/S. KUTTICKAL CONSTRUCTIONS,
REPRESENTED BY ITS PROPRIETOR,
OFFICE NO.131/A/8, THOTTAPPALLY. P.O,
ALAPUZHA, PIN - 688561
- 6 NIYAS SIDHIQUE,
ERINETHVADAKKETHIL HOUSE,
MALMELBHAGAM, KAREELAKULANGARA.P.O,
ALAPUZHA, PIN - 690572
- 7 PRASANTHAKUMARI.S,
'PAVITHRAM', TOWN WARD,
NOORANAD P.O, ALAPUZHA DIST, PIN - 690504

BY ADVS.

Salil Narayanan K.A.

JOBI JOSE KONDODY

R.SUNIL KUMAR

A.SALINI LAL

M.P.SREEKRISHNAN, SC

B.G.BIDAN CHANDRAN, SC

SRI.S.KANNAN, SR. GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 17.10.2023, ALONG WITH WP(C).3549/2023 AND
CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



W.P.(C) No.3549/2023 & connected cases
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CR

N. NAGARESH, J.

.....
W.P.(C) Nos.3549, 11526, 15258
and 20721 of 2023
.....

Dated this the 17th day of October, 2023

J U D G M E N T

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A common question of law arises in these writ petitions and hence the writ petitions are considered together and disposed by a common judgment.

2. W.P.(C) No.3549 of 2023 has been filed by the petitioners who belong to Scheduled Caste (SC) community and who are residing in Thekkumala SC Colony in Maneed Panchayat of Ernakulam District. According to the petitioners, about 150 families live in and around the foothills



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of Thekkumala. There are water bodies, Chira, Church and a Padasekharam nearby.

3. The 10th respondent has undertaken National Highway (NH) project work and has entered into agreement for extraction of ordinary earth with respondents 11 and 12, who own a large extent of land on one side of Thekkumala. The 10th respondent has obtained Ext.P2 Quarrying Permit. When permission of the 2nd respondent-Maneed Grama Panchayat was sought, the Panchayat as per Ext.P3, decided to request the concerned authorities to cancel the permission granted to the 10th respondent in view of the possible adverse environmental impact. The Grama Sabha also, as per Ext.P4, requested the Government to cancel the permissions granted.

4. By Ext.P5, the Panchayat has prohibited plying of heavy vehicles as the activity causes damage to the road. The Panchayat again, as per Ext.P10, requested the Geology Department to cancel the permission granted to the 10th respondent. The petitioners also submitted Ext.P12



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series representations to the 6th respondent-Kerala State Commission for SC and ST and to the 7th respondent-District Collector. The 3rd respondent-Secretary to Panchayat has issued Ext.P13 Stop Memo. The petitioners seek to quash Ext.P2 Quarrying Permit issued to the 10th respondent and to direct respondents 1 to 5 to conduct Environmental Impact Assessment Study on the work of quarrying of ordinary earth at Thekkumala before permitting quarrying in the area. The petitioners seek to enforce Ext.P13 Stop Memo issued by the Panchayat. Certain other incidental reliefs are also sought.

5. The 10th respondent resisted the writ petition filing counter affidavit. There is no such hill at all in Maneed Panchayat, contended the 10th respondent. There is no SC Colony either, in Ward No.1. The petitioners are not residents of the area where quarrying work or transportation takes place. The extraction and transportation of ordinary earth for NH projects have been exempted from obtaining Environmental Clearance (EC) as per SRO No.1224(E) dated 28.03.2020 of the Ministry of Environment, Forest and



W.P.(C) No.3549/2023 & connected cases
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Climate Change (MoEF&CC).

6. The Panchayat cannot stop plying of lorries, contended the 10th respondent. The 10th respondent has been awarded the work of 6-Laning of NH-66. About 70% of the work is already over. Huge quantity of ordinary earth is required to complete the work. Ext.P2 Mining Permit has been issued on the basis of Ext.R10(C) application submitted by the NH authorities. The District Collector has granted Ext.R10(D) police protection for transportation of ordinary earth for NH work. This Court has also granted Ext.R10(E) interim police protection to the 10th respondent in W.P.(C) No.40305 of 2022. The writ petition is therefore without any merit, urged the 10th respondent.

7. W.P.(C) No.11526 of 2023 has been filed by a construction company which has taken a sub-contract for the 6-Laning of Paravoor-Kottukulangara section of NH-66. The 4th respondent has approved the Mining Plan for quarrying ordinary earth required for the NH project work. When the petitioner's workers went to the Site to clear bushes, the 5th



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respondent and his henchmen obstructed the workers stating that they will not permit mining or transportation of ordinary earth.

8. Ext.P5 complaint filed by the petitioner to the 3rd respondent-Station House Officer did not yield any response. Hence, the writ petition was filed. When the writ petition came up for hearing on 06.06.2003, this Court passed an interim order directing the 3rd respondent to give adequate protection to the petitioner from the 5th respondent and his henchmen, for removing ordinary earth strictly in terms of Quarrying Permit dated 08.05.2023.

9. The 5th respondent opposed the writ petition contending that the Panchayat President and Members of the Panchayat including Opposition Leader of the Panchayat, have filed W.P.(C) No.20721 of 2023 challenging the mining activity of the petitioner without valid EC and hence an order of police protection cannot be granted to the petitioner in this writ petition.



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10. W.P.(C) No.15258 of 2023 is a writ petition filed by the Thrikkur Grama Panchayat seeking to set aside Ext.P1 Quarrying Permit and to direct the 1st respondent to stop the extraction and transportation of ordinary earth on the basis of Ext.P1 Permit without obtaining EC. According to the petitioner, huge illegal excavation of ordinary earth is going on from the property of respondents 6 and 7. Under the pretext of NH project, excavation of minor minerals is done violating law and without obtaining EC.

11. According to the petitioner, the area where illegal extraction of ordinary earth is done is an area where severe water scarcity subsists. The Ayyancode Pond, which is a drinking water source, will be polluted due to excavation. The Panchayat has approved huge funds to renovate the said pond. Ordinary earth is being removed from hilly terrain. Ext.P1 quarrying permit is not supported by EC. In view of the orders of the NGT and Ext.P5 OM dated 08.08.2022 of the MoEF&CC, the quarrying in question is illegal and Ext.P1 Quarrying Permit is liable to be set aside.



W.P.(C) No.3549/2023 & connected cases
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12. Respondents 6 and 7 resisted the writ petition, filing counter affidavit. The Ayyancode Pond is 122 metres away from the excavation Site and the excavation will not in any manner pollute water in the pond. Excavation is done without any blasting operations. The pond was in an abandoned form and the Panchayat did not care to protect the pond for a considerably long period. There is no such Padasekharam near the excavation Site as alleged. The irrigation canal is 150 metres away. Ext.P1 Quarrying Permit is perfectly valid, contended respondents 6 and 7.

13. W.P.(C) No.20721 of 2023 has been filed by the President, the Leader of Opposition and Ward Members of Palamel Panchayat along with a local resident. The petitioners state that in connection with the work of 6-Laning of Paravoor- Kuttankulangara section of NH-66, no EC has been obtained for mining ordinary earth. At the instance of respondents 5 to 7, who are sub-contractors, the Project Director, NHAI has issued Ext.P7 letter dated 02.03.2023 to the 2nd respondent-Geologist requesting co-operation to



W.P.(C) No.3549/2023 & connected cases
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remove ordinary earth from 1.075 Hectares of land in Survey No.226 of Palamel Village.

14. The petitioners state that there is a hillock in Kathadeth Colony, on the top of which there is a drinking water storage tank with a capacity of 8,25,000 litres. The hillock maintains ground water level in the entire area. Extraction of ordinary earth from this area will result in severe ecological imbalance. In W.P.(C) No.2740 of 2009 filed by a private person in 2009 seeking permission to excavate soil, this Court, in WA No.487 of 2009 arising therefrom, has directed that report of the Centre for Earth Science Studies should be considered by the Government, before permitting any mining activity.

15. The Government has not taken a decision as directed. But, the Geologist as per Ext.P9 dated 13.03.2023 has now approved the Mining Plan. On the basis of Ext.P9, respondents 5 to 7 are trying to illegally mine ordinary earth from the area.



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16. The petitioners would urge that as per Clause 3 of EIA Notification, 2006, all activities and projects listed in the Schedule to the Notification require prior EC unless it falls under projects listed in Appendix 9. By Ext.P1 Notification SRO.1224(E) dated 28.03.2020, the Appendix was amended, by bringing in activity of extraction/ sourcing/ borrowing of ordinary earth for linear projects like roads and pipelines. The NGT directed the Government to reconsider the SRO.1224(E) dated 28.03.2020.

17. Thereupon, by Ext.P2 clarification dated 08.12.2022 of the MoEF&CC, it was decided that if the linear project has obtained EC based on EIA Studies incorporating sourcing of such construction materials and other activities, no fresh EC is necessary. If sourcing material is not considered in EIA or the linear project does not attract the necessity of EC, then such activity will be subject to Environmental Regulations. According to the petitioners, the source of materials should be clearly mentioned in the project's EC, failing which minerals can be sourced or



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extracted only on the basis of separate EC obtained under EIA Notification, 2006. In the facts of the case, the mining sought to be carried out by the respondents requires EC.

18. The 7th respondent in W.P.(C) No.20721/2023 filed a counter affidavit. The 7th respondent stated that M/s.Viswasamudra Engineering Private Limited approached her for permission for extraction and sourcing of ordinary earth for the work of NHAI under Bharatmala Pariyojana Scheme. The 7th respondent thereupon approached the Geologist, Alappuzha for permission for excavating ordinary earth from her property. The Geologist visited the property and issued Ext.R7(a) Letter of Intent as provided under Rule 8 of the Kerala Minor Mineral Concession Rules, 2015. Ext.R7(a) stated that the 7th respondent is eligible for quarrying permit for extraction of ordinary earth from the property in question, provided a mining plan prepared by a Recognised Qualified Person (RQP) is produced.

19. The 7th respondent consulted RQP. The RQP along with his team conducted several visits to the property



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and prepared a Mining Plan, which was submitted to the Geologist. Based on Ext.R7(b) Mining Plan, the Geologist issued Ext.R7(c) quarrying permit on 08.05.2023 for extracting ordinary earth. The petitioner alleged that the 2nd petitioner who is the President of Palamel Grama Panchayat was earlier a PWD Contractor who had cancelled his licence to contest election to the Panchayat. He was actually involved in mining activities in various areas in the Panchayat for construction work. There was some difference of opinion between M/s.Viswasamudra Engineering Private Limited and the 2nd petitioner consequent to which the company approached the 7th respondent. The 2nd petitioner has animosity towards the company and the 7th respondent for this reason.

20. The 7th respondent submitted that Appendix IX of EIA Notification 2006 had exempted certain projects and activities from obtaining Environmental Clearance. Extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines, etc. are exempted



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from the requirement of EC. Ext.P1 notification mainly deals with Section 8B of the MMDR Act, 1957. Sections 5 to 13 of the Act will not apply to minor minerals. Section 15 empowers the State Government to make rules in respect of minor minerals. Therefore, except for the Appendix IX in Ext.P1, the rest of what is stated in Ext.P1 will not apply to the extraction of minor minerals.

21. It is evident from Ext.P2 that even though expert appraisal committee had recommended certain guidelines, the MOEF & CC issued Ext.P2 Office Memorandum modifying Ext.P1 stating that the exemption granted to Appendix IX in Ext.P1 for extraction or sourcing or borrowing of ordinary earth for linear projects shall be subject to Standard Operating Procedure (SOP) attached to Ext.P2 OM. Based on Ext.P1, the Government of Kerala has issued Ext.R7(d) GO authorising the District Geologist to issue quarrying permit for extraction or sourcing or borrowing of ordinary earth for linear projects. Ext.R7(d) has clarified that such extraction can be conducted with the previous



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permission of the District Geologist concerned. As the 7th respondent has necessary permission from the District Geologist, the writ petition is liable to be dismissed.

22. I have heard the learned counsel appearing for the petitioners in the writ petitions and the learned counsel appearing for contesting respondents. I have also heard the learned Government Pleader representing the State. Exhibits are referred to as they are marked in W.P.(C). No.20721 of 2023, for convenience, hereinafter.

23. Regarding the requirement of EC for mining of ordinary earth, as per Clause 3 of EIA Notification 2006, all projects or activities listed in the Schedule of the EIA Notification 2006 are required to obtain Environmental Clearance unless they fall in and of the activity or projects enumerated in Appendix IX of EIA Notification 2006. As per Ext.P1 Notification dated 28.03.2020, the Appendix IX of EIA Notification 2006 was amended and the activity of extraction/sourcing/borrowing of ordinary earth for linear projects such as roads, pipeline, etc. were included in the



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Appendix.

24. Ext.P1 Notification dated 28.03.2020 was challenged before the National Green Tribunal and the Tribunal directed the MOEF & CC to reconsider Ext.P1. Thereafter, the MOEF & CC issued Ext.P2 O.M. dated 08.12.2022.

25. Ext.P2 OM would indicate that the matter was referred to the concerned Expert Appraisal Committee (EAC) and the EAC after due deliberation, was of the opinion that if such linear projects have obtained EC based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the EC appraisal process. However, if such sourcing of materials is not considered in the EIA or such linear projects does not attract provisions of EC, then such individual activities will be subject to extant environmental regulations as per EIA Notification 2006 as amended and/or applicable environmental safeguards related directions issued by the State Government / SPCB which need to be observed while



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sourcing construction materials.

26. The argument of the petitioners who oppose the mining activities in question is that in view of Ext.P2 if the linear project has obtained Environmental Clearance based on EIA studies only after incorporating sourcing of such construction materials and other activities, then alone requirement of EC is exempted. If such sourcing of material is not considered while issuing EC or if such linear project does not attract the necessity of Environmental Clearance, then such activity will be subject to the necessity of Environmental Regulations. The source of such mineral is to be clearly mentioned in the EC obtained for the project.

27. It is true that as per Ext.P2 OM dated 08.08.2022, the EAC has opined that if linear project has obtained EC based on EIA studies incorporating sourcing of construction material, then a separate EC is not necessary and that if such sourcing of material is not considered in the EIA or such linear projects does not attract provisions of EC, then such individual activities will be subject to Environmental



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Clearance. However, a closer reading of Ext.P2 would show that though the EAC has given such an opinion, the MOEF & CC, after examination by the Ministry in detail, decided that exemption from EC provided as per Ext.P1 SRO.1224(F) dated 28.03.2020 for extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines, etc. shall be subject to SOP enclosed to Ext.P2 OM. Ext.P2 OM therefore would indicate that the Government of India, MOEF & CC has dispensed with the requirement of EC for sourcing of construction material or other activities for linear projects and instead, imposed the condition of following the prescribed SOP in respect of projects covered by Ext.P2.

28. The SOP attached to Ext.P2 has given clear guidelines and general directions in the matter. The SOP provides that environmental issues like siting borrow pit locations, soil erosion aspects, accumulation of run off and associated problems, disposal of debris by local community in open borrow area, transport of borrow earths to construction site, preservation of top soil of 15 m depth and



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reuse for plantation and reinstatement of borrow pits and sites, shall be considered before selection of site.

29. The SOP would also state that for selection of the site for the borrow area, agricultural land, cut material available from other road construction projects, dredging materials from dredging operations of ponds, lakes, rivers, canals, material from barren land or land without tree cover outside the road RoW and material from excavation of proposed culverts can be considered. Highly productive top soil shall be stored separately and used for plantation activity.

30. The SOP further mandates that borrowing shall be avoided on the lands close to toe line, irrigated agricultural lands, grazing lands, land within settlements, one kilometre from environmentally sensitive areas such as reserve forests, protected forests, sanctuary, national parks, conservation reserves, wetlands, etc., unstable and fragile side-hills, streams and seepage areas and areas supporting rare plants / animal species. It should be ensured that unsuitable soft



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rock is not prominent within the proposed depth excavation which will render rehabilitation difficult.

31. The SOP also makes provision for cutting open small drains to facilitate drainage, back filling of borrow pits, preservation of trees, allowing of natural vegetation growth, etc. Therefore, it is evident that the MOEF & CC has provided a comprehensive SOP for borrow area identification, operation, safety and re-development, to substitute requirement of comprehensive EC in respect of linear projects like construction of roads and bridges.

32. Based on Ext.P1, the Government of Kerala issued GO dated 10.08.2022 authorising the District Geologist within the respective area of jurisdiction to issue quarrying permit for extraction or sourcing or borrowing of ordinary earth for linear projects. The GO clarified that such extraction can be conducted with the previous permission of the Geologist concerned, with proper study by the Government Engineers who supervise the government work and to excavate ordinary earth scientifically based on the



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recommendation of the Engineers.

33. In the light of Ext.P2 OM dated 08.12.2022, it has to be held that the exemption from EC provided for works relating to linear projects as per Ext.P1 SO dated 28.03.2020 shall be subject to SOP alone, enclosed to Ext.P2 OM. Extraction of ordinary earth for work relating to linear projects does not require a separate Environmental Clearance. The argument of the petitioners in W.P.(C) Nos.3549/2023, 15258/2023 and 20721/2023 in that regard, is therefore only to be rejected.

34. Having come to the conclusion that the activities of extraction/sourcing/borrowing of ordinary earth for linear projects included in Appendix IX of EIA Notification, 2006 as per Ext.P1, need to follow only the SOP prescribed under Ext.P2 O.M., let us consider the claims of the petitioners in these writ petitions.

(1) W.P.(C) No.3549 of 2023

Apart from the absence of EC for the quarrying activities of the 10th respondent, the petitioners would allege



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that the Panchayat has requested to the authorities to cancel the permission granted to the 10th respondent. The petitioners would further point out that the Panchayat has prohibited plying of heavy vehicles through certain roads as transportation of quarried materials causes damage to roads.

35. The authorities whom the Panchayat has approached to cancel the Quarrying Permit / other permissions, have not passed any orders cancelling the permission/s granted to the 10th respondent. The existence of a SC Colony nearby by itself cannot be a reason to prohibit the activity of the 10th respondent as long as the activity is following the law of the land.

36. The petitioners would urge that the SOP should precede the project and would point out that the Quarrying Permit issued is already lapsed. I do not deem it necessary to decide the issue at this stage as the 10th respondent would submit that they are ready to apply for fresh Quarrying Permit following the SOP. In the said circumstances, it will be open to the District Geologist to act in accordance with law.



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37. As regards prohibition allegedly imposed by the Panchayat on plying of heavy vehicles, this Court has held in the judgment in ***Jimmichan Mathew @ Tomy v. State of Kerala [2022 (1) KLT 373]*** that the Grama Panchayats have no power to regulate traffic through public roads, which power is vested with the authorities under the Motor Vehicles Act. In the afore circumstances, I find no merit in the writ petition. W.P.(C) No.3549 of 2023 is therefore dismissed.

2. W.P.(C) No.11526 of 2023

In the light of the conclusions made in this judgment as regards the applicability of Ext.P2 GO to the activities of the petitioner, the petitioner-Company is entitled to police protection to carry out their activities. Respondents 2 and 3 are therefore directed to grant adequate protection to the petitioner for removing red earth from the 0.9858 hectares of land in accordance with the mining plan and permit issued by the Mining and Geology Department, from the threats of the 5th respondent and persons claiming under him. W.P.(C) No.11526 of 2023 is ordered accordingly.



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3. W.P.(C) No.15258 of 2023

The writ petition is filed by Thrikkur Grama Panchayat seeking to set aside Ext.P1 Quarrying Permit issued for excavation of ordinary earth for the project of National Highway. As I have already held that an EC is not required as the activity is for a linear project, Ext.P1 Quarrying Permit cannot be set aside for want of EC. If the Panchayat has a case that the area has water scarcity and that the mining is polluting Ayyancode Pond, the Panchayat is at liberty to take up the issue before the Geologist, for strict implementation of the SOP prescribed in Ext.P2 OM. With the said observation, W.P.(C) No.15258 of 2023 is dismissed.

4. W.P.(C) No.20721 of 2023

The petitioners would urge that in W.A. No.487 of 2009 this Court had directed to obtain a report from CESS before permitting mining activity in the area. The said judgment will not be of any assistance to the petitioners as the mining is now governed by Ext.P2 OM dated 08.08.2022.



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In the light of my finding on the non-requirement of EC and applicability of SOP, W.P.(C) No.20721 of 2023 is only to be dismissed and it is ordered accordingly.

Sd/-

N. NAGARESH, JUDGE

aks/12.10.2023



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APPENDIX OF WP(C) 3549/2023

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE DECISION NO. 1/3 DT. 4-11-2022 OF THE PANCHAYAT, OBTAINED UNDER THE RTI ACT.
- Exhibit P2 TRUE COPY OF THE QUARRYING PERMIT NO. 01/22-23/MM/QP/OE/DOE/2539/E2/2022 DATED 7-11-2022 OBTAINED BY THE 10TH RESPONDENT FROM THE 4TH RESPONDENT GEOLOGIST, OBTAINED UNDER THE RTI ACT.
- Exhibit P2(a) TRUE COPY OF THE LETTER BY 10TH RESPONDENT TO THE 3RD RESPONDENT DT. 18-11-2022, OBTAINED UNDER THE RTI ACT.
- Exhibit P3 TRUE COPY OF THE DECISION NO. 16(1) DT. 14-12-2022 OF THE MANEED PANCHAYAT, OBTAINED UNDER THE RTI ACT.
- Exhibit P4 TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES BOOK SHOWING DECISION DT. 24-12-2022 OF THE GRAMA SABHA OF WARD NO. 1 IN MANEED PANCHAYAT, OBTAINED UNDER THE RTI ACT.
- Exhibit P5 TRUE COPY OF THE ORDER NO. SC I-4873/2022 DATED 31-12-2022 OF 2ND RESPONDENT PANCHAYAT, OBTAINED UNDER THE RTI ACT.
- Exhibit P6 TRUE COPY OF THE LETTER DATED 31-12-2022 OF 3RD RESPONDENT TO THE 9TH RESPONDENT, OBTAINED UNDER THE RTI ACT.
- Exhibit P7 TRUE COPY OF THE JUDGMENT DT. 16-1-2023 IN WP(C).NO. 1393 OF 2023, OBTAINED UNDER THE RTI ACT.
- Exhibit P8 TRUE COPY OF THE LETTER DT. 16-1-2023 BY 3RD RESPONDENT TO THE 9TH RESPONDENT, OBTAINED UNDER THE RTI ACT.



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- Exhibit P9 TRUE COPY OF THE DECISION NO. 4(1) DT. 19-1-2023 OF THE PANCHAYAT, OBTAINED UNDER THE RTI ACT.
- Exhibit P10 TRUE COPY OF THE DECISION NO. 1 DT. 23-1-2023 OF THE PANCHAYAT, OBTAINED UNDER THE RTI ACT.
- Exhibit P11 TRUE COPY OF THE TOPOGRAPHICAL MAP OF THEKKUMALA IN WARD NO. 1 OF MANEED GRAMA PANCHAYAT WAS PREPARED BY A REGISTERED ENGINEER 'B', OBTAINED UNDER THE RTI ACT.
- Exhibit P12 TRUE COPY OF THE REPRESENTATION BY PETITIONERS 2, 4 AND OTHERS
- Exhibit P12(a) TRUE COPY OF THE RECEIPT DT. 23-1-2023 ISSUED BY THE OFFICE OF 7TH RESPONDENT.
- Exhibit P12(b) TRUE COPY OF THE POSTAL RECEIPT DT. 25-1-2023 ADDRESSED TO THE 6TH RESPONDENT COMMISSION.
- Exhibit P13 TRUE COPY OF THE STOP MEMO NO. SC I-3421/21 DT. 31-1-2023.

RESPONDENT'S EXHIBITS

- Exhibit R-10(A) True copy of the SO 1224 (E) dated 28.03.2020 issued by the Ministry of Environment, Forest and Climate Change
- Exhibit R-10(B) True copy of the award of work issued by the National Highway Authority to this respondent dated 28.12.2021
- Exhibit R-10(C) True copy of the request dated 30.9.2022 submitted by National Highways Authority of India along with the undertaking before the District Geologist, Ernakulam
- Exhibit R-10(D) True copy of the police protection order dated 29.11.2022 issued by the District Collector/District Magistrate, Ernakulam to the District Police Chief
- Exhibit R-10(E) True copy of the interim order of this honourable court dated 13.12.2022 in WPC No.40305 of 2022



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Exhibit R-10(F) True copy of the interim order of this
honourable court dated 31.01.2023 in
W.P (C). No. 3250 of 2023

Annexure R1(a) A true copy of the SO 1224(E), dated
28.03.2020

Annexure R1(b) A true copy of the OM, dated 8.12.2022



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APPENDIX OF WP(C) 11526/2023

PETITIONER'S EXHIBITS

- Exhibit P1 COPY OF THE WORK ORDER ISSUED BY M/S VISHWA SAMUDRA ENGINEERING PVT LTD TO PETITIONER DATED 16/9/22
- Exhibit P2 COPY OF THE RELEVANT PAGES OF THE APPLICATION GIVEN BY PRASHANATHA KUMARI TO THE DISTRICT GEOLOGIST FOR QUARRYING PERMIT DATED 4/1/23
- Exhibit P3 COPY OF THE LETTER ISSUED BY THE SEW INFRASTRUCTURE TO THE DISTRICT GEOLOGIST DATED 25/1/23
- Exhibit P4 COPY OF THE LETTER ISSUED BY THE 4TH RESPONDENT TO PRASANTHA KUMARI DATED 13/3/23
- Exhibit P5 COPY OF THE COMPLAINT FILED BEFORE THE 3RD RESPONDENT DATED 28/3/23
- Exhibit P5 COPY OF QUARRYING PERMIT DT. 8.5.2023.

RESPONDENT'S EXHIBITS

- Exhibit R5(a) True copy of the resolution dated 4.11.2022
- Exhibit R5(b) True copy of the letter number C.8-14015/2022 Dated 17.1.2023 from the Tahsildar



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APPENDIX OF WP(C) 15258/2023

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE QUARRYING PERMIT DATED 12.04.2023 ISSUED TO THE SIXTH RESPONDENT BY THE FIRST RESPONDENT
- Exhibit P2 TRUE COPY OF THE DECISION OF THRIKKUR GRAMA PANCHAYATH DATED 06/03/2023 ACCEPTING THE TENDER FOR THE WORK OF RENOVATION OF POND
- Exhibit P3 TRUE COPY OF THE RESOLUTION OF PANCHAYATH STEERING COMMITTEE OF THRIKKUR GRAMA PANCHAYATH DATED 20.04.2023
- Exhibit P4 TRUE COPY OF THE G.O. NO. SO1224E DATED 28.03.2020 ISSUED BY THE MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE
- Exhibit P5 TRUE COPY OF THE OM DATED 08.08.2022 ISSUED BY THE MINISTRY OF ENVIRONMENT FORREST AND CLIMATE CHANGE
- Exhibit P6 TRUE COPY OF THE INTERIM ORDER OF THIS HONORABLE COURT DATED 1.2.2023 IN WPC NO.3549 OF 2023
- Exhibit P7 TRUE COPY OF THE INTERIM ORDER OF THIS HONORABLE COURT DATED 09.03.2023 IN WPC NO.3549 OF 2023

RESPONDENT'S EXHIBITS

- Exhibit R6(a) The photographs showing the pond
- Exhibit R6(a) (1) True copy of the survey sketch prepared for the purpose of mining permit
- Exhibit R6(b) True copy of the Non-Assignment Certificate bearing No.1335/2022 dated 11/11/2022, issued by the Village Officer, Kallur Village



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Exhibit R6 (c) True copy of the report prepared by the competent person along with covering letter bearing No. SCCPL/2022-23/KL1258 and KL1420/345 dated 11/3/2023

Exhibit R6(e) True copy of the Letter issued by the District Geologist dated 3/4/2023 approving the Mining Plan

Exhibit R6(d) True copy of the communication bearing No. 11015 and 11061/21/KAP THA-KOD/2022/NH-544/400 dated 20/3/2023

PETITIONER'S EXHIBIT

Exhibit-P8 True copy of the statement submitted by the 2nd respondent in WP(C) No. 3549 of 2023 without exhibits



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APPENDIX OF WP (C) 20721/2023

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF SO.NO.1224(E) DATED
28.03.2020

Exhibit P2 TRUE COPY OF THE CLARIFICATION ISSUED
BY THE MINISTRY OF ENVIRONMENT, FOREST
AND CLIMATE CHANGE DATED 08.12.2022

Exhibit P3 TRUE COPY OF THE STATEMENT FILED BY
THE STATEMENT IN WP(C).NO.3549/2023
FILED BY THE 1ST RESPONDENT IN SAID
WRIT PETITION WITHOUT EXHIBITS

Exhibit P4 TRUE COPY OF THE INTERIM ORDER IN
WP(C).NO.15258/2023 DATED 05.05.2023

Exhibit P5 TRUE COPY OF THE INTERIM ORDER IN
WP(C).NO. 3549/2023 ORDER DATED
09.03.2023

Exhibit P6 TRUE COPY OF THE LETTER DATED
23.02.2023 ISSUED TO THE PROJECT
DIRECTOR, NHAI, THIRUVANANTHAPURAM

Exhibit P7 TRUE COPY OF THE LETTER DATED
02.03.2023 ISSUED BY THE PROJECT
DIRECTOR TO THE 2ND RESPONDENT

Exhibit P8 TRUE COPY OF THE JUDGMENT IN
WA.NO.487/2009 DATED 13.01.2012

Exhibit P9 TRUE COPY OF LETTER DATED 13.03.2023
OF THE SR.GEOLOGIST, DEPARTMENT OF
MINING AND GEOLOGY

Exhibit P10 TRUE COPY OF RESOLUTION DATED
04.11.2022 OF PALAMEL PANCHAYATH

RESPONDENT'S EXHIBITS

Exhibit R7(a) True copy of the Letter of Intent
issued by the Geologist, Alappuzha to
the 7th respondent dated 15.02.2023



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- Exhibit R7(b) True copy of the relevant pages of the mining plan approved by the Geologist, Alappuzha on 10.03.2023
- Exhibit R7(c) True copy of the quarrying permit dated 08.05.2023 issued by the 2nd respondent to the 7th respondent
- Exhibit R7(d) true copy of the G.,O(P) No. 14/2022 ID dated 10.08.2022 issued by the Government of Kerala, Industries (A) Department
- Exhibit R7(e) True copy of the Circular dated 14.09.2022 issued by the Director Mining and Geology to all District Geologists

PETITIONER'S EXHIBITS

- Exhibit P11 True copy of unanimous resolution of the Palamel Gramapanchayath dated 20.06.2023
- Exhibit P13 True copy order in OA 190/2020 of National Green Tribunal dated 28.10.2020
- Exhibit P14 True copy of the order of the National Green Tribunal Pune Bench in OA.No.36/2021 dated 03.02.2022
- Exhibit P15 True copy of order of National Green Tribunal Special bench in OA 68/2020 dated 31.5.2022
- Exhibit P16 True copy of the government order GO(P) No. 14/2022/ID dated 10.08.2022
- Exhibit P12 True copy of the order of the National Green Tribunal Principal bench in E.A.55/2018 in O.A.520/2016 dated 11.12.2018
- Exhibit P17 True copy of the order of the Honourable Supreme Court of Indian in Civil Appeal No.(s) 1628,1629/2021 dated 10.08.2023
- Exhibit P18 TRUE COPY OF RELEVANT PAGES OF THE REPORT SUBMITTED BY CENTRE FOR EARTH SCIENCE STUDIES, THIRUVANANTHAPURAM BEFORE THIS HON'BLE COURT



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Exhibit P19	TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED ON 01.05.2010 IN MALAYALA MANORAMA DAILY
Exhibit P20	TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED ON 21.7.2010 IN HINDU DAILY
Exhibit P21	TRUE COPY OF THE NEWSPAPER REPORT PUBLISHED ON 06.05.2010 IN HINDU DAILY