BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal No. 136 of 2016 (SZ)

In the matter of

Bhaskaran V.A
Maneed Village, Muvattupuzha Taluk
Ernakulam Dt, Kerala .. Appellant

Vs.

1.The State Environment Impact Assessment
Authority, rep. by its Chairman,
Thiruvananthapuram, Kerala

2. The State Expert Appraisal Committee
Rep. by its Chairman
Thiruvananthapuram, Kerala

3. The District Collector, Ernakulam, Kerala

4. The Geologist, Ernakulam, Kerala

5. Saji. K. Elias
Thiruvaniyoor, Ernakulam .. Respondents

Counsel appearing for the appellant

M/s. K. Abdul Jawad, Prasanth Kumar

M.K.S. Saravanan, Anoop. R & Grancy Jose

Counsel appearing for the respondents

For respondent Nos.1 & 2 .. Mrs. Vidyalakshmi Vipin

For respondent Nos. 3 & 4 .. Mrs. A.S. Suvitha

For respondent No.5 .. M/s. Dinesh R. Shenoy
T.S. Saumya

ORDER

Quoram: Hon'ble Justice Dr. P.Jyothimani, Judicial Member
Hon'ble Shri P.S. Rao, Expert Member

Delivered by Justice Dr. P.Jyothimani, J M

9th February, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

This appeal is directed against the Environmental Clearance (EC) dated 13.4.2016 granted by the first respondent – State Environment Impact Assessment Authority (SEIAA), Kerala to the fifth respondent for the proposed expansion of building stone quarry in Survey Nos.302/6, 302/7.1, 302/7.2, 302/8 302/1.2, 298/15, 298/14, 298/16, 298/13, 298/12, 302/2.2, 301/1, 301/2, 302/5.1 and 302/5.2.2 covering an area of 3.9947 Ha in Thiruvaniyoor Village and Panchayat, Kunnathunad Taluk, Ernakulam District.

2. According to the appellant the impugned EC was granted for quarry which has been illegally operating without EC for years and even after submission of application for EC on 17.7.2014. The appellant who is stated to be a senior citizen engaged in agricultural operations in 2 acres of land in Re-Survey No.300/1, Block No.4, Thiruvaniyoor Village which is adjoining on three sides of the lands of the 5th respondent including the above said extent of 3.9 hectares wherein he has been conducting granite quarry without EC. According to the appellant, the land in Survey Nos.302/6, 302/7.1, 302/7.2, 302/8, 302/1.2, 302/2.2, 302/5.1, 302/5.2.2 were already mined upto a depth exceeding 200 meters from the general ground level and then abandoned. The residential building stated to have been constructed by the appellant is located 17 meters away from the quarry. According to the appellant the lands of the fifth respondent were agricultural lands which were converted into quarry without obtaining permission from the authorities. The illegal mining has caused damage to the land and agriculture of the neighbours and the appellant, being a heart patient has been receiving noise and the quarrying causes threat to the human life, apart from affecting quality of air, water etc.

3. The appellant and others have moved the High Court of Kerala for stopping of illegal mining and there was a restraint order by the High Court against the fifth respondent from running the unit without EC in W.P.(C) No.12620 of 2015 and the said order was subsequently confirmed by the Division Bench in W.A.1810 of 2015. There was another writ petition W.P.(C) No.23846 of 2015 in which a restraint order was

passed against the fifth respondent on 13.8.2015 and therefore the fifth respondent was forced to stop the mining activity.

4. According to the appellant, the fifth respondent had quarried beyond 200 meters depth from the ground surface, thereby making the land useless for further quarrying. The fifth respondent included the mining land comprised in Survey Nos.302/6, 302/7.1, 302/7.2, 302/8, 302/1.2, 302/2.2, 302/5.1 and 302/5.2.2 in order to obtain EC and the first and second respondents have not identified the mined and virgin land and survey number and there was no proper Environment Impact Assessment (EIA).

5. After the judgment in *Deepak Kumar's* case by the Supreme Court, there shall be no mining without EC even in respect of extent of land less than 5 hectares. The fifth respondent got renewal of permit without EC every year and conducted mining activity and even after making application on 17.7.2014 for EC. Before obtaining EC he has mined for nearly one year till the High Court has restrained him, as stated above.

6. According to the applicant, by virtue of the judgment of the Principal Bench of the NGT in *S.P. Muthuraman's* case (O.A.No.213 of 2014) the fifth respondent is a violator and he should be delisted. However, the first respondent has entertained the application of the fifth respondent for renewal and granted EC on 13.4.2016. The appellant has submitted an objection on 21.8.2015 and also made various representations and apprehending non consideration of objection the appellant has moved the High Court. Inspite of the direction from the High Court, the first respondent has not given any opportunity and ultimately the first respondent has decided to hear the appellant and factually objections were not considered. There was no notice of inspection and suitability of the land for further mining has not been considered. The appellant was thereafter given notice on 29.3.2016 and on the request of the appellant the first respondent has decided to hear him on a subsequent date and there was no further notice. While the appellant was expecting notice, the impugned EC came to be issued to the fifth respondent which was not uploaded in the website. The appellant has sought for a copy of EC from the first respondent and he was able to receive

unauthenticated copy of EC and therefore he sought for authenticated copy which was received on 11.6.2016 with which the present appeal has been filed.

7. According to the appellant as per Annexure A9 and A10 the first respondent has admitted that there was no earth. The reason given is the direction given by the High Court in C.C.C.No.645 of 2016 to issue EC to the fifth respondent forthwith. The issuance of EC is in violation of the judgment in *S.P. Muthuraman's* case and there was an erroneous consideration of facts. The existence of the residential house of the appellant at 17 Mts away from the quarry was not properly appreciated. It is erroneous for the first respondent to state that the construction of the said house was started only one week before the date of inspection. The appellant's objections were discussed without proper application of mind. By virtue of the Condition Nos.19 and 28 of the General Conditions appended with EC, the fifth respondent is not entitled for the grant of EC.

8. The appellant has chosen to challenge the issuance of EC on various grounds, including that by virtue of the judgment of the Supreme Court in *Deepak Kumar's* case and Official Memorandum of the MoEF dated 18.5.2012, even in respect of extent of land which is less than 5 hectares, it is a condition precedent for obtaining EC. The conduct of the fifth respondent in quarrying after applying for EC on 17.7.2014 for more than one year before the grant of EC is illegal and therefore applying the judgment in *S.P.Muthuraman's* case the fifth respondent should have been delisted.

9. It is the further ground raised by the appellant that the first and second respondents have failed to consider the existence of a residential building which is 17 Mts away from the quarry and that is against the Kerala Minor Mineral Concession Rules, 2015. The EIA which includes identification, prediction, evaluation, mitigation and communication have not been considered. It is also the case of the appellant that the existence of quarry is not a disqualification for a person to put up a construction and that was reiterated by the judgment of the High Court of Kerala and that the objections have not been properly considered, apart from not conducting the EIA study in a proper manner which resulted in failure of following the principles of inter generational equity and principles of natural justice.

10. It is the further ground of the appellant that Condition Nos.19 and 28 of the General Conditions of mining project given under EC for mining project prescribes that the maximum depth of mining shall not exceed 10 Mts and the minimum distance of quarry from the dwelling unit shall be 100 meters makes the grant of EC as invalid.

11. While granting the EC, the first and second respondents have failed to identify the veracity of the mining plan wherein the fifth respondent is stated to have shown 7.5 meters barrier around the mining area which is false and in such circumstances, the second respondent ought to have appraised the application along with the mining plan. Further, the second respondent has not inspected the existence of wells. It is the further case of the appellant that the first respondent ought to have put forth a pre condition of reclaiming the mining pit to the general ground level, since it is a hilly terrain. It is also the case of the appellant that the second respondent has failed to identify the onsite and offsite engineering impacts, cascading impacts and geomorphic impacts. The fifth respondent has included the mined area which was abandoned with a *mala fide* intention to deceive the first and second respondents. As per the geographical situation in the hill with the mined area he could only start mining on virgin land in Survey No.301/2 which belongs to one, Paily Varkey, who leased out the same to one, Sonil Elias for laterite mining even before issue of EC and neither the land owner nor the laterite permit holder applied for EC and the fifth respondent cannot transfer the EC to them without following the procedure under the EIA Notification, 2006. That apart, it is the case of the appellant that the project consultant has no accreditation.

12. In the reply filed by the fifth respondent dated 28.7.2016 while raising a preliminary issue of limitation on the basis that the registered post was received from the first respondent by the appellant on 13.5.2016 and therefore the filing of the appeal is beyond the period of limitation, it is stated that the EC was made applicable to the mining permit also only after the Division Bench ruling of the High Court of Kerala reported in 2015 (II) KLT 79 when the ambiguity was cleared. However, the fifth respondent has applied for EC on 17.7.2014 itself. While stating that the appeal is not maintainable on facts and law, it is stated that the appellant and his two sons have compelled the fifth respondent to purchase 2 acres of “Tharisu” land belonging to them

for an exorbitant price and when it was not agreed upon, the appellant has chosen to make various representations and objections stating that EC should not be granted on the ground that his house is situated abutting the land. It is to support his case as if there was a house in existence he had dug a foundation unauthorisedly to construct a shed long prior to the discussion which was on 2.8.2015. The fifth respondent has obtained all necessary clearances, permits and licences for conducting granite quarry and there was also renewal currently.

13. It is stated that the appellant has filed two suits in O.S.No.66 of 2014 and O.S.No.1 of 2015 in the District Munsif Court, Kolenchery for restraining the fifth respondent from removing the top soil and also claiming right of easement through the property of the respondent respectively. The interim applications filed for injunction have been dismissed by the learned District Munsif and the suits are pending. It is having frustrated by the order, the appellant started filing writ petitions before the High Court one after another. Even the documents filed like the Residential Certificate, Receipt for Building Tax Certificate from the Village Officer about the existence of residential house are all obtained after the grant of EC. It is also stated that the appellant's building is 2.15 Kms away from the quarry on the other side of Attinakkara Padasekharam, comprising more than 300 Acres of land and the distance between the fifth respondent's quarry and Padasekharam is more than one kilometre and the appellant is not residing anywhere near the area. It is stated that both the appellant as well as his children are residing in three big residential houses in Maneed Village which is more than 2.5 Kms away from the property of the fifth respondent and therefore the appellant can have no grievance and therefore it is false to state that the appellant and his children are living near the quarry site and suppressing all these facts the present appeal has been filed.

14. It is also the case of the fifth respondent that the appellant and his henchmen have given false complaints frequently and resorted to illegal activities against which police action has been taken against them and the conduct of the appellant is only blackmailing along with his henchmen for their private interest. Every time when a renewal was granted for quarry, complaints were filed just at that time so that the authorities will take some action by delaying the process of granting permission to the fifth respondent. The conduct of the appellant and others in approaching the High Court

is also one such effort and in fact in WP.(C) No.24944 of 2014 filed by the appellant and others, their claim was rejected by the Hon'ble Division Bench of the Kerala High Court stating that there is no police harassment and only to stultify the police investigation.

15. After the judgment of the Supreme Court in *Deepak Kumar's* case the fifth respondent has applied for EC in 2014 with all documents including the Project Reports and EIA incurring huge expenses. Since the period of the first respondent has expired, the application of the fifth respondent was kept pending and in the mean time the appellant, through his henchmen, approached the High Court. The SEIAA has inspected the fifth respondent property on 22.7.2015 and intimated the fifth respondent to submit approved mining plan which was also complied with. Even thereafter the first respondent authority was not reconstituted and ultimately it was in March, 2015 the first respondent was reconstituted and started functioning and even thereafter also the application of the fifth respondent was not processed and it was in those circumstances the fifth respondent was forced to approach the High Court by filing W.P.(C) No.21803 of 2015 for a direction against the first respondent which was allowed on 3.8.2015 directing the first respondent to pass final orders without any further delay within one month. In the mean time, the appellant has obtained an order from the High Court to close down the quarry which was complied with by the fifth respondent.

16. The Panchayat, Revenue Authority and the authorities under the Explosives Act, and Mines Act, including the Director General of Mines from Kerala apart from the first respondent have inspected the quarry site and found that the objections raised against the quarry as false. It was ultimately in the 46th Meeting of the first respondent held on 29th and 30th September, 2015 the Committee has taken a decision to recommend for quarry by issuance of EC and thereafter the fifth respondent has submitted the Social Responsibility Proposal for Rs.5,75,000/- which was accepted.

17. Inspite of that, again the appellant and his henchmen have made repeated complaints by continuing blackmailing attitude and the application was kept aside by the three member Committee of the first respondent for site inspection about which the fifth respondent came to know only through internet on the first week of December, 2015. False complaints have been made in the name of various persons who have written to

the fifth respondent stating that they have not given any complaint and the Village Officer has also certified that there are no residential buildings within 100 meters of quarry or EHT line, railway line or PWD road. However, the first respondent has still deferred action on the ground of false complaints. It was at that time, the appellant was hastily making construction in the property, lying north of the fifth respondent's quarry site to make it appear as if there is a residential building.

18. The fifth respondent filed W.P.(C) No.37121 of 2015 for appointment of Advocate Commissioner to inspect the premises and the Advocate Commissioner appointed by the High Court has submitted a detailed Report on 14.12.2015 making it very clear that the complaint given by the appellant has no substance and it was thereafter the High Court has directed the second respondent to consider the findings of the Commissioner's Report and take a final decision in respect of the grant of EC within two weeks with a direction to consider the objections of the appellant. However, there was no direction to give notice and hear the appellant. There has been misrepresentation by Shiju Paulose and Joy Ayinikiudiyil for filing W.P.(C) No.11096 of 2015 before the closure of the High Court for vacation in 2015 and another writ petition W.P.(C).No.22768 of 2014 was filed making false allegations of removal of gravel by the fifth respondent without prior permit from the Mining and Geology Department and though initially there was an interim order, after the fifth respondent entered appearance through counsel and verification of licence the Geologist withdrew the "stop memo" issued pursuant to the interim order passed by the High Court. The appellant has filed another writ petition in W.P.(C).No.1829 of 2015 falsely alleging that the fifth respondent has no licence to conduct quarry through the same counsel who appeared for Shiju Paulose and after filing the counter by the fifth respondent the writ petition was withdrawn seeking leave to challenge the permit and licence which were issued.

19. Inspite of the direction given by the High Court, a further inspection was conducted by the Chairman and the Administrator of the first respondent and after fully convinced, the order came to be passed in granting EC on 23.1.2016. The fifth respondent states that he has complied with all the requirements of law and the first and second respondents have considered everything and there has been three successive

inspections of which two by SEIAA and one by SEAC. The appellant himself is residing in a house at Ward No.6 of Maneed Grama Panchayath which is 2.5 Km away and there are no human habitations near the quarry as found in the Advocate Commissioner's Report.

20. The judgment of *Deepak Kumar's* case is only relating to mining lease and not mining permits which are to be obtained every year. Further the order in *S.P. Muthuraman's* case has no application to the facts of the case and there is no ex post facto clearance granted to the quarry by the first respondent. As directed by the authorities the work of filling up of quarry pit to a depth of 10 Mts has been going on and it is almost completed as a major portion of mining pit is already filled up. The grounds raised by the appellant are all denied and it is specifically stated that the judgments relied on by the appellant is not applicable to the facts of the present case and that the building itself has been constructed immediately adjacent to the property of the fifth respondent and the appellant's property is having an extent of 2 Acres which lies more than 200 Mts away from the southern boundary in which he is now stated to have put up a residential building. The allegation of the appellant that the land is ecologically fragile and flora and fauna are available are false. The EC granted by the first respondent is on a detailed assertion of fact and ultimately depth of mining is limited to 30 meters MSL and the mining is systematic open cast mining with benches as the granite is hard rock formation, land slide or instability are never envisaged. With the above said pleadings the fifth respondent has prayed for dismissal of the appeal. The fifth respondent has also filed various documents to substantiate his case.

21. Mr. K. Abdul Jawad, the learned counsel appearing for the appellant has submitted that the 5th respondent who is stated to have made application in Form – I on 17.7.2014, has started mining activity even before the impugned EC is granted by the SEIAA dated 13.4.2016. Therefore, according to him, by applying the dictum laid down by the Hon'ble Apex Court in *Deepak Kumar's* case, the 5th respondent is to be treated as violator and he should not have been granted the EC by the SEIAA. Even after the grant of EC, the 5th respondent has quarried without complying with the conditions of EC, particularly paragraph No.7 regarding reclamation of pits and the 5th respondent has stopped quarrying only after this Tribunal has restrained him. Further, even the

Joint Inspection Report dated 29.8.2016 submitted as per the direction of this Tribunal also shows that the 5th respondent has not made reclamation of mining pits. Therefore, according to him, by applying the decision of the Principal Bench of the NGT in *S.P. Muthuraman's* case, the 5th respondent is a violator and on that ground the EC has to be set aside.

22. It is his further contention that the impugned EC is liable to be set aside on the ground that the EC is deemed to be ex post facto clearance which has been held invalid by the Principal Bench of the NGT in *S.P. Muthuraman's* case. The 5th respondent, having commenced the activity of mining as early as in the year 2008, continued the same without EC till the grant of EC and by virtue of the illegal act large quantity of mining has been conducted illegally by the 5th respondent. It is also his case that the records would reveal that the mining is almost impossible in the area and inspite of it, the EC has been granted with impossible conditions as if the land is a virgin land. He has taken strenuous effort to bring forth the point with a comparison of a mining plan with the actual land in existence by way of the sketches and figures which would prove the extensive illegal mining carried on by the 5th respondent and therefore such illegality is regulated by the impugned EC which according to the learned counsel amounts to ex post facto clearance. According to him, even though the proposal given which resulted in the issuance of EC is for expansion of quarry, the same cannot be treated as expansion. Further, the mining plan never segregated the quarried part of the land from the virgin land, as if the same is available and there was no occasion to separately assess the impact of the future mining with the cumulative impact of the excessive mining already done. It is only in those circumstances, it can be treated as an expansion of quarry and in as much as the application was not in the above terms, the application can be only termed as a proposal for fresh quarry and therefore the conduct of the 1st respondent in granting the EC in favour of the 5th respondent can only be treated as ex post facto clearance.

23. It is his further contention that even while granting the EC the SEIAA or SEAC has not made proper appraisal. The term "environment" is having extensive scope and the EIA Notification, 2006 relates to the effect of activities on environment, a proper impact study should have been made and thereafter the appraisal should have been

done. According to the learned counsel, it means that the 1st and 2nd respondents ought to have assessed the potential of the area for future mining and for assessing the same the impact of the extensive mining already taken place and huge pits formed by third parties which lies close to the proposed land, ought to have been carried out. According to the learned counsel when it is admitted that the 5th respondent has been quarrying for the past eight years and huge pits have been formed as a result of such quarry resulting in serious impact on the human life, agriculture, neighbouring properties, quality of water, flora and fauna etc., the first respondent should have addressed these issues in the impugned EC. The 1st respondent SEIAA having found that the appraisal done by the 2nd respondent regarding mining below ground level in its 44th meeting ought to have remitted the matter for fresh appraisal to SEAC instead of SEIAA conducting inspection by itself and therefore according to the learned counsel this amounts to improper appraisal of the impact as per EIA Notification ,2006. That apart, it is his contention that the authorities have failed to take note of the fact that the appellant's property is situated at a higher level than the land of the 5th respondent and by the conduct of the 5th respondent in deeply mining in the lower level close to the boundary of the property of the appellant without leaving 1 Mt distance from the boundary and especially when the civil suit is pending, such conduct will cause severe damage and hardship to the property of the appellant and this aspect has also not been considered.

24. He has also submitted that Clause 17 of the General Conditions attached to the impugned EC mandates that the height and width of the benches should not exceed 5 Mts respectively while Clause 19 mandates that the maximum depth of mining from the general ground at site shall not exceed 10 Mts. The said conditions, according to the learned counsel, are incapable of fulfilment, as there were no benches at all in the site at the time when the first respondent considered for grant of EC. According to the learned counsel, even as on date there are no benches as stipulated and the depth of mining pit at all points of time exceeded 200 Mts from the general ground level. Many parts of the site are lying at the slope more than 45 degrees. If only proper application of mind is made by the respondents 1 and 2, it would have been resulted in irresistible conclusion that the 5th respondent cannot comply with those conditions and inspite of

the same, such impossible conditions have been imposed which will make the impugned EC as invalid. It is his further case that a patent illegality has been committed by the 5th respondent in directing reclamation of pits as a pre condition for the grant of EC. It is also his case that reclamation of pits as such is not possible as the depth exceeds 200 Mts from the ground level. The joint inspection would reveal that the 5th respondent has failed to comply with the reclamation as stipulated by the first respondent as a condition. He would also submit that the 5th respondent has also violated the other laws like Kerala Minor Mineral Concession Rules (KMMC Rules), Mines Act, 1952 and the Metalliferrous Mines Regulation, 1961 (MM Regulaltion). According to the learned counsel, as per Regulation 164 of the MM Regulations which declares 300 Mts around firing/blasting point as danger zone and human life are to be properly settled and in the presence of dwelling houses within the prohibited distance, the first respondent ought to have considered the violations of other laws before the grant of EC. He has also submitted that the first respondent has failed to consider the presence of the dwelling house of the appellant and he has also relied upon the judgment of the High Court of Kerala in JOSEPH V. STATE OF KERALA 2003 (3) KLT 296.

25. The learned counsel also submits that in the light of the direction of the Kerala High Court in directing the 1st respondent to consider the objections against the grant of EC to the 5th respondent, without hearing the objections, the grant of EC to the 5th respondent amounts to violation of principles of natural justice. The 1st respondent has also failed to consider the objections raised by the appellant on merit and therefore the impugned EC is violative of the principles of natural justice. He has also submitted that the appraisal of the impact of mining has not been done in an effective manner He also repeated Condition Nos. 17 and 19 of EC and stated that the pits formed in the land of the 5th respondent lie deep and steep and far beyond 10 Mts from the natural ground level of the land and the officers who have inspected the site have not approached the issue in a scientific manner. It is his further submission that the 1st and 2nd respondents have not tested the correctness of the mining plan. He has repeated that more than half of the land proposed has been affected by extensive mining and therefore the mining plan has misrepresented the actual and physical nature of the land and in such

circumstances the factual representation made by the 5th respondent in the application form as well as mining plan ought to have been considered and appreciated in a proper manner by making cross check which according to the learned counsel would have revealed the misrepresentation made by the 5th respondent. He has also submitted that the EC is liable to be held invalid on the ground that it is against the Precautionary Principle and Public Trust doctrine. He has also relied upon the judgment of the Kerala High Court in SOMAN V. GEOLOGIST 2004 (3) KLT 577 and THILAKAN V. CIRCLE INSPECTOR OF POLICE (AIR 2008 Kerala 48). It is his further submission that the claim of the 5th respondent as if the appeal is mala fide is absolutely false. What required is to foresee the adverse impact of mining particularly the appellant's lands in the event of permitting further mining on all the sides. In as much as in all the three sides of the appellant's property the mining has been permitted as per the EC, naturally the appellant is an affected party and it cannot be said that he is to be hit by mala fide. He would conclude saying that the non consideration of the above said relevant facts resulted in affecting the life of the appellant to occupy his house and therefore the EC violates Article 21 of the Constitution of India.

26. In effect the learned counsel appearing for the appellant has raised the legal issues regarding the definition of 'environment' under Section 2(a) of the Environment (Protection) Act, 1986 (EP Act) which is wide and the environment impact assessment must be in terms of the EP Act. Further, the EC does not address the impact of the indiscriminate quarrying which has already been done and in the absence of cumulative impact of mining already done, the EC which is expected to be a prior EC, is against the EP Act or otherwise the grant of EC will amount to condoning or regularising the act done earlier by the 5th respondent and therefore it will amount to ex post facto clearance. Lastly, the appellant contends that the appraisal has not been done properly considering the impact of the indiscriminate mining already done.

27. Per contra, it is the contention of the learned counsel appearing for the 5th respondent Mr. Dinesh R. Shenoy that the appeal as such is barred by limitation and according to him, as per Clause 8(ii) of the EIA Notification, 2006 the EC granted by the 1st respondent SEIAA after considering the views of the 2nd respondent SEAC whose decision is final and the EC as a Certificate issued by the 1st respondent is only a

consequential administrative action and therefore the limitation starts from the date when the 45th meeting of the 1st respondent SEIAA held on 23.1.2016 and by applying the said date, the appeal filed by the appellant is beyond the period of limitation. The appellant was aware of the order dated 23.1.2016 at least on the date of filing of the writ petition in the High Court in W.P.6440 of 2016 on 18.2.2016 and therefore he ought to have filed the appeal within 30 days from the said date and the present appeal has been filed on 15.7.2016 which is beyond the period of limitation and also beyond the condonable limit. Otherwise, it is the case of the learned counsel appearing for the 5th respondent that the issuance of EC dated 13.4.2016 is only consequential to the decision taken in the meeting of SEIAA on 23.1.2016 and when once the appellant is aware of the said date, the limitation starts triggering from the said date and hence the appeal should be dismissed as barred by limitation.

28. It is his further submission that the appeal is to be rejected on the principles of res judicata. The order dated 23.1.2016 was challenged by the appellant before the High Court in W.P.(C)No.6440 of 2016 which was dismissed on 13.6.2016 as infructuous and without seeking any leave or reserve his right to file appeal against the EC dated 23.1.2016, the appellant has allowed the writ petition to be dismissed. The dismissal of the writ petition was not due to the pendency of the appeal before this Tribunal and therefore the present appeal is hit by *res judicata*.

29. It is the case of the learned counsel appearing for the 5th respondent that the appeal is liable to be rejected on the ground of mala fides. According to the learned counsel the appeal itself is the consequence of the greed of the appellant to blackmail the 5th respondent and to make undue enrichment by compelling the 5th respondent to purchase 2 Acres of 'Tharisu' land of the appellant for a fancy price above market value especially when there is no access to road. Further, it is not true that the appellant and his two children are residing near the quarry site and in fact they are living in Maneed Village situated more than 2.5 Kms away and that the appellant, his wife and children and their spouses have enrolled in voters list from the said Village. There are photographs which are produced as CD when the appellant demanded the 5th respondent that he should pay exorbitant amount and purchase his property, stated

above. Therefore, according to the learned counsel, the filing of the present appeal is only to settle the personal score.

30. On the factual aspect of the case, it is submitted by the learned counsel appearing for the 5th respondent that the challenge made to the EC is not sustainable even on facts. The order of SEIAA as well as the proceedings of SEAC would show the extent to which the authorities have deeply gone into the matter. Even though under the EIA Notification, 2006 there is no necessity for public hearing since the matter relates to Category B2 project the SEAC to have fairness, has conducted an inspection on 17.9.2015 after its 45th meeting and it was thereafter in the 46th meeting dated 29/30,9,2015 the SEAC has recommended grant of EC in favour of the 5th respondent.

31. He has also submitted that when large number of complaints were filed by the appellant as well as his henchmen, the SEIAA has decided to conduct a site inspection by itself on 13.11.2015 to find out the genuineness of such complaints and the site inspection was conducted on 8.1.2016 and it was thereafter on 23.1.2016 the SEIAA considered the entire matter threadbare with the site inspection report and the report of the Advocate Commissioner in W.P.(C).No.37121 of 2015 and after fully satisfied that there is no substance in complaints except regarding the depth of mined pit, the SEIAA has ultimately decided to grant EC subject to reclamation in the mined pit to the extent of 10 Mts depth which cannot be held to be invalid. According to the learned counsel even SEAC has considered all aspects of environmental issues and taking note of the fact that it is an existing quarry with abandoned pits nearby and that it will not form part of the cluster, recommended for the grant of EC. It was also found that there was no dwelling unit nearby, no floral biodiversity, no stream or water source in the locality and it was only after considering the topography the Appraisal Report was filed.

32. The minutes of the meeting recorded in Annexure A37 would show that the allegation of improper appraisal is totally false. According to the learned counsel, the appellant having chosen to produce only the appendix in Form – I application without producing the entire Form – I cannot turn around to say that the 5th respondent has not produced Form – I. It is also his case that the 5th respondent has Comprehensive Mining Plan and Progressive Mine Closure Plan after approval by the Geologist and

placed them before the 1st respondent and it was only after the statutory requirements are complied with, the EC came to be issued in favour of the 5th respondent. By producing the truncated copy of Form – I the appellant is only attempting to stealthily suppress the material fact while making false representation as if the 5th respondent has made false representation in Form I proposal. It is the appellant who has fraudulently resorted to produce only appendix in Form – I without producing the entire application and he is liable for deliberate suppression.

33. It is his further submission that the Power Point Presentation has been made by the 5th respondent before the SEAC and there can be no suppression at all to the authorities viz, 1st and 2nd respondents. The fact that the area is not a earthquake prone area and there is no ecologically sensitive region, no forest land or protected area etc. near the quarry have been duly considered by the SEAC. The appellant has not shown any one point that the 5th respondent has made deliberate suppression. The contention raised regarding survey numbers have been completely disproved on the basis of the document. In respect of Surface Plan and the Group Sketch the learned counsel also would submit that it is wrong to say that the 5th respondent is a violator of law. On the other hand, the 5th respondent was having mining permits issued in respect of quarry and it was only after referring to certain judgments of this Tribunal of the year 2013 – 2014 and the judgment of the Division Bench of the High court of Kerala reported in 2015(II) KLT 78 wherein for the first time it was declared that the requirement of EC under EIA Notification 2006 is applicable to granite quarry for less than 5 Hectares area covered by quarrying permit also and not only to quarrying lease.

34. The appellant who filed many cases in the High Court has never raised any point that the 5th respondent has been quarrying without EC. The reason was that it was not an issue till the Division Bench has given judgment in 2015 (II) KLT 78, as stated supra. It was for the first time on 3.17.2015 the 5th respondent was directed not to carry on quarrying operation and thereafter the 5th respondent has stopped quarrying. In fact in the writ petition filed by the appellant there was an interim order that if the 5th respondent is operating the quarry without EC, the SEIAA shall ensure quarrying operation to be stopped and the said order was passed during the admission stage and when a contempt application was filed that there has been violation of the said order by

the 5th respondent, the High Court has dismissed the contempt application and therefore it cannot be said that the 5th respondent is a violator.

35. The learned counsel questions the allegation of the appellant that there is an ex post facto clearance, since the application is for extension for the existing quarry, it was the permit quarry in a small extent of 0.80 Hectares only. The learned counsel also would submit that the quarry was having a depth of 200 Mts is absured and incorrect 200 Mts is equivalent to around 675 ft which is the height of a 70 storeyed building and such wild allegation of 200 Mts depth made by the appellant, is false reading as to such a depth cannot be possible in a small extent of 80 Ares quarrying site. Even in the present EC where quarrying permit is for 3.996 Hectares the possible ultimate depth of quarry which can be permitted is only 40 Mts in benches of 5 Mts height each. The Appraisal Report of the SEAC shows elevation of land ranging from 40 to 72 Mts and the depth is only 30 Mts AMSL which is the maximum permissible depth. Therefore, the allegations made to the contra by the appellant is denied by the learned counsel appearing for the 5th respondent. He also denied the violation of KMM Rules and Mines Act etc.

36. The contention of the learned counsel appearing for the appellant that there is existence of a residential building within the prohibited distance of 100 Mts from the quarry is false even as per the EC wherein it is clearly stated that as on the date of decision to grant EC viz., 23.1.2016 there was no building and what was noticed was only a desperate attempt by the appellant to complete the building within the prohibited distance before the decision to grant EC was taken. The SEIAA recorded a statement dated 8.1.2016 that there was no completed building in existence in the appellant's property as on the said date. Therefore, according to the learned counsel appearing for the 5th respondent, the appellant has made false averment as if there is a building in existence, while the records show otherwise.

37. He also relied upon the contents of the Advocate Commissioner's Report which clearly stated that there is no well in the property of the appellant. The Report further shows that Church and Anganwdi are situated at least 360 Mt away and there is only a small stream which is atleast 430 Mts away. He also disputes the contention of

the learned counsel appearing for the appellant and states that the application dated 14.6.2015 submitted on 17.6.2015 by the appellant was only for permission for construction of two storeyed building in the total plinth area of more than 2,500 Sq.ft and therefore it is clear that on 17.6.2015 there was no building in existence and there is an existence of a single storeyed structure of 400 Sq.ft. and the deemed permit or licence as alleged by the appellant is not applicable.

38. The learned counsel further submits that the claim of the appellant as if the official respondents have been in favour of the 5th respondent is totally false. On the other hand, the official respondents have always been harsh against the 5th respondent which is evidenced by various notices issued and actions taken by the official respondents, including the Geologist's order - Annexure A41 directing the 5th respondent to pay the cost of earth moved by him from one portion of his property to the other which is contrary to law and inspite of that the appellant has falsely stated that the official respondents have colluded with the 5th respondent.

39. The contention of violation of principles of natural justice is controverted as unsustainable. He also submits that the decision in *S.P. Muthuraman's* case by the Principal Bench of NGT has no application to the facts of the present case. There is no post facto clearance in this case at all and by virtue of the direction of the High Court the 5th respondent has already stopped the quarry and at the time of grant of EC there was no quarrying made at all except for a brief period. While it is true that there was some misunderstanding regarding the impact of the judgment in Deepak Kumar's case, in respect of permit which was finally settled by the Division Bench of Kerala High Court in 2015 and therefore the 5th respondent has stopped mining, the judgment in Deepak Kumar's case has not been violated.. According to the learned counsel, the appellant can not have any grievance against the 5th respondent's quarry as the photographs clearly show that there are benches provided on both northern and western boundaries of the appellant's property, and there is no possibility for any harm that may be caused because to the appellant's property, especially when the benches are of much less than 5 Mts in height and wide enough to accommodate and support the huge load bearing lorries which are operated in the quarry. The benches will not be touched as the 5th respondent is conducting quarry on the eastern portion of the quarry as per EC and

therefore there is no possibility for any landslide at all. Further, by the conduct of the appellant, the 5th respondent who has got EC is unable to quarry, resulting in huge loss while the 4th respondent has assessed and collected huge amount for the years 2014 – 2015 and 2015 – 2016.

40. Mrs. Vidyalakshmi, learned counsel appearing for SEIAA has submitted that in as much as inspections have been conducted by SEAC as well as SEIAA and found the factual circumstances as per the report submitted, there is absolutely no merit in the case of the appellant. That is also the case of Mrs. Suvitha A.S, learned counsel appearing for the District Collector as well as Geologist.

DISCUSSION AND CONCLUSION:

41. We have heard learned counsel appearing for the appellant as well as respondents extensively, referred to the pleadings and documents filed, including various reports of the authorities and given our anxious thoughts to the issue involved in this case.

42. It has to be decided as to whether the EC granted by the 1st respondent – SEIAA in favour of the 5th respondent dated 13.4.2016 is sustainable in law? If not, to what other reliefs the parties are entitled to?

43. In so far as it relates to the maintainability of the appeal, the period of limitation has to start from the date of impugned EC viz., 13.4.2016. Any decision taken in the meeting of SEIAA becomes operative only after EC is granted. Therefore, it cannot be said that grant of EC is only an administrative order. Therefore, the contention raised by the learned counsel for 5th respondent in this regard is not sustainable and we are not inclined to dismiss the appeal on that ground. Likewise, the plea of res judicata is not applicable. The decision taken in the meeting of SEIAA on 23.1.2016 has not culminated into an order granting EC which is statutorily challengeable before this Tribunal under Section 16(h) of the NGT Act. Further, the High Court has dismissed the W.P.(C) No.6440 of 2016 as infructuous on 13.6.2016 after the grant of EC on 13.4.2016. There is no decision on merit of the case between the parties by adjudication and therefore the plea of res judicata is not applicable on the facts of the

case. Since a fresh cause of action arose on 13.4.2016 as per the Statute, there is no question of seeking any leave from the High Court.

44. On the facts of the case, before adverting to the issue stated above, it is relevant to point out some of the factual matrix involved in this appeal. It can not be disputed that the application filed by the 5th respondent on 17.7.2014 to SEIAA for the grant of EC is for an extension of the existing building stone quarry covering an area of 3.9947 Ha comprised in Survey Nos.302/6, 302/7.1, 302/7.2, 302/8 302/1.2, 298/15, 298/14, 298/16, 298/13, 298/12, 302/2.2, 301/1, 301/2, 302/5.1 and 302/5.2.2 in Thiruvaniyoor Village, Kunnathunad Taluk, Ernakulam District, Kerala, as it is seen in the impugned EC. It is also not in dispute that as per the EIA Notification, 2006, the project is covered under "B2" Category. The property of the appellant is comprised in 2 Acres in S.No.300/1 in Block No.4 which is covered on three sides by the property of the 5th respondent for which the EC has been granted for building stone quarry and according to the appellant by virtue of the EC the land in which he is stated to have put up a house for the residential occupation, will be affected. The case of the appellant is that the 5th respondent has included the other survey numbers to show as if it is an existing quarry and that the 1st and 2nd respondents have not attempted to find out as to whether it is already mined land in which the 5th respondent proposed to expand or is a virgin land. As stated above, it is the case of the appellant that the 5th respondent has applied for expansion on 17.7.2014 for which the EC was granted on 13.4.2016. In the interregnum period, the 5th respondent without EC, has continued the mining and therefore he should be declared as a violator and his application should have been delisted as per the order of the Principal Bench of the NGT in S.P. Muthuraman's case. At this stage, it is relevant to note that on the facts of the said order passed by the NGT in S.P.Muthuraman's case, the facts of the present case cannot be compared. In S.P. Muthuraman's case which relate to the construction of multi storeyed building, the project proponents have completed construction without applying for EC. The Government of India under a communication has granted post facto approval for such conduct of the project proponent therein and the issue involved in that case was as to whether the project proponents who were stated to have been informed by the other authorities like Metropolitan Development Authority that they may proceed with the

construction and accordingly they have completed the construction. It was in those circumstances the Principal Bench of the NGT held that such memorandum which seeks to grant post facto approval for the construction of building which requires prior EC is not valid in law. The Principal Bench has also held that those project proponents who have proceeded to complete the construction without prior EC and without making any application for EC are not entitled to claim any protection under such post facto approval. The said finding, in our considered view, is not at all applicable to the facts of the present case for the simple reason that admittedly the 5th respondent who has got other surrounding lands has been quarrying and the proposal made by him on 17.7.2014 was only relating to the expansion of the area to a limited extent of 3.9947 Ha. Therefore, there is no question of applicability of any post facto approval in this case and in such circumstances the plea of the appellant that the application of the 5th respondent should have been delisted, has no legs to stand.

45. The next consequential question is as to whether before granting the impugned EC the conduct of the 5th respondent as a permit holder in mining can be ignored. It is true that as per the judgment of the Supreme Court in Deepak kumar's case reported in 2012 (4) SCC 629 in the judgment delivered on 27.2.2012 it was held by the Hon'ble Apex Court that prior EC is a mandatory requirement for mining even in the area less than 5 Ha and the Government of India in its memorandum dated 18.5.2012 has also reiterated the same.

46. In respect of the Kerala Minor Mineral Concession Rules, 1967, after the judgment of the Supreme Court in Deep Kumar's case, there appears to have been some discrepancy because of the proviso to Rule 12. Rule 12 which relates to quarrying permit, came to be amended many times. The proviso originally stood as follows:

> **"**provided that the environment clearance required under Rule 9 shall not be insisted, in the case of renewal of quarrying permit in respect of quarries which had a valid permit as on 9th day of January, 2015."

47. To the above said proviso to Rule 12 there was a further amendment inserted on 19.5.2015 which is as follows:

> "In Rule 12 in the 1st proviso for the words and figures "in respect of quarries which had a valid permit as on 9th day of January, 2015" the words and figures

"in respect of granite (building stone) quarries which had valid permit during the financial year 2014-15" shall be substituted."

48. There was another amendment carried out on 5.10.2015 to the 1st and 2nd proviso to Rule 12 which reads as follows:

"2. The amendment of Rules - In the Kerala Minor Mineral Concession Rules, 2015

(1)In Rule 12, for the 1st and 2nd proviso the following proviso shall be substituted namely:- "provided that the minor plan and environmental clearance required under Rule 9 shall not be insisted in respect of renewal of quarrying permits of granite (building stone) quarries which had quarrying permits under Kerala Minor Mineral Concession Rules, 1967 on or before 26th February, 2012."

49. In the said amendment dated 15.10.2015 the Government has issued an explanatory note which is as follows:

"Explanatory Note

This does not form part of the notification, but is intended to indicate its general purport)

The Kerala Minor Mineral Concession Rules, 2015 were issued under Notification No.G.O (P)16/2015/ID dated 7 th February, 2015 and published as per S.R.O. No.72/2015 in the Kerala Gazette Extraordinary No.288 dated 7 th February, 2015. In the order dated 27 th February, 2012 of the Hon'ble Supreme Court of India, in Deepak Kumar v. Sate of Haryana case ([2012] 4 SCC 629) environmental clearance has been made mandatory for grant/renewal of quarrying leases till the rules are framed by the State Governments and Union Territories as per the directions given by the Court in this order. Considering the peculiar situation prevailed in the State environmental clearance could not be insisted by the State Government during such period. In the judgment dated 23rd March, 2015 of the Hon'ble High Court of Kerala in W.P(C) No.31148/2014 and other connected cases, the Hon'ble Court has made it clear that the quarrying permits granted/renewed after 27th February, 2012 without obtaining environmental clearance are not valid. The rule 12 of the above rules was challenged before the Hon'ble High Court in W.P(C) No.31148/2014 and other connected cases and in the judgment dated 23 rd March, 2015, the Hon'ble Court has also made it clear that there was no necessity of environmental clearance for issuance of quarrying permit in a area less than or equal to 5 hectares before 27th February, 2012. In order to make the renewal of permits issued before 27 th February, 2002 possible and to give sufficient time to the existing quarrying permit holders for obtaining environmental clearance and mining plan for applying for quarrying lease, Government have decided to amend rules 12 and 13 of the Kerala Minor Mineral Concession Rules, 2015.

The Notification is intended to achieve the above object".

50. In ALL KERALA RIVER PROTECTION COUNCIL vs. STATE OF KERALA (2015 (2) KLT 78) and also NAJEEB VS. SHOUKATH ALI (2015 (3) KLT 396) while

interpreting Rule 12 of the 2015 Rules, the Division Bench of the Kerala High Court has held that valid permit means permit which may entail a permit holder to carry on mining operation and mining operation can be carried out only with EC and before the said judgment was given by the Division Bench, it appears that the above said amended Rule of 2015 was operational in respect of permit holders who have obtained permit on or before 26.2.2012.

51. As far as the 5th respondent in the present case is concerned, his permit was stated to be in the year 2006 and as per the letter of the appellant dated 21.8.2015 in Annexure 47, the 5th respondent has obtained permit from 2006 and it appears that the permit has been renewed from time to time till the judgment of the Division Bench in the year 2015 in accordance with Rule 12 proviso as it stood originally and as amended in 2015. It appears that the 5th respondent has been quarrying based on permit without EC and after the judgment of the Division Bench and in accordance with the direction given by the authorities, he has stopped quarrying from July, 2015 and the said *status-quo* is maintained as on date.

52. It was in fact in the latest judgment of the Division Bench of the High Court of Kerala in NATURE LOVERS' FORUM VS. STATE OF KERALA (W.P. (C) No.34463 of 2015 dated 7.12.2015) wherein the Hon'ble First Bench of the Kerala High Court held that the proviso to Rule 12 inserted on 5.10.2015 is not in accordance with the judgment of the Supreme Court in *Deepak Kumar's* case and therefore not valid in law apart from holding that the Office Memorandum issued by the Government of India is in accordance with the statutory powers conferred under the EP Act and binding on the parties. The above said facts relating to proviso 12 and -- are narrated in the above judgment of the Division Bench and therefore the building stone quarry carried out by the 5th respondent upto July, 2015 should have been in furtherance of the amended Rules of 2015 to the KMM Rules and in such circumstanes it cannot be said that from the date of application by the 5th respondent for EC viz., 17.7.2014 he has illegally quarried and should be declared to be a violator.

53. In so far as it relates to the impact assessment, the impugned EC dated 13.4.2016 itself has referred to the Field Inspection conducted by a Sub Committee of SEAC, Kerala dated 17.9.2015 with the following Report:

> "The project is an active quarry located at about half a km southeast of Pazhukkamattom near Thruvaniyoor. This quarry area of 3.9947 ha falling in own land forms part of a gently undulating terrain with slope to the north. The elevation ranges from 40 m in the north to 70 m in the south. The rock type is fractured charnockite suite of rocks with NW-SE foliation. Major faults are not observed in the site. On the eastern side outside the lease area, several abandoned pits with steep cuttings are seen. Two other quarries are also seen in the vicinity but not falling within the limits of a cluster. In the lease area also steep cuttings are seen adjacent to old workings but the active side is provided with benches. Pockets of weathered rock with about 2 m thick over burden (OB) and top soil is seen in the upper southern part. On the extreme western part, a depression is seen with a width of about 20 m where the OB thickness is likely to exceed 2m. A lear bit on the eastern side with steep north facing cliff section is apparently critically disposed. Being an elevated part of an undulating terrain, streams are not seen in the site. The entire drainage from the elevated land including the quarry is channelized into the abandoned quarry pit on the northern side where it is collected and pumped out for agricultural purposes. Out flow is not seen. Rubber plantation is the dominant land-use in the area but pineapple cultivation is also seen. Floral biodiversity is not observed as the quarry area is mostly cleared of vegetation. Haulage road to the upper level is formed but not provided with hard surfacing. The approach road is through own property and need maintenance. Dwelling units are noted on the NE side but adjacent to the main road. The water demand of the quarry is met from the old quarry pit which acts as a RWH structure. Accommodation to workers and canteen facilities are not observed.
>
> Based on an overall evaluation of the site, the quarry operations may be recommended with following conditions:
>
> 1.Fencing should be provided all around the lease area. The steep cut faces of the old workings should be further demarcated and fenced to be left as danger zone.
> 2. Over burden must be stored in the designated places and provided with protective support walls. The 20 m wide strip of depressed land with thick soil cover may be used for this purpose. Storage of OB in the elevated part as planned may be avoided.
> 3. Part of the drainage from the quarry is currently directed to the old pit that act as RWH structure. However, over flow is not provided. It may do in the form of a lined drain, draining to the north. The water from the RWH structure should be let out only after clarification/desiltation for which a suitable structure is essential at the outlet.
> 4. Considering the topography, garland drains need not be insisted upon.

5. The main haulage road formed in the quarry must be maintained in motorable condition. The approach road to the quarry from the main road is not maintained at all. This road should also be maintained in good motorable condition by the proponent.
6. In the absence of perennial streams in the vicinity, ultimate depth of mine will depend on the possible benches of 5 m width and 5 m height in the lease area. However, the depth should be limited to 15 m amsl being the level of broad valley floor in the vicinity.
7. Other items from general conditions like a) Appropriate sign boards should be displayed. B) The blasting time must be displayed and strictly adhered to c) The PPV values must be less than 10 mm/sec d) Steps to be taken to limit fly rock t within the lease area. Rock fragments should not fall anywhere outside the lease area, e) Dust suppression mechanism must be in place f) A belt of trees (Vegetation belt) should be maintained all around the quarry but must be maintained till the entire life of quarry g) The promised activity under CSR may be added."

54. This Report was considered by the SEAC in its 46th meeting on 29/30.9.2015 and recommended for the grant of EC subject to the Realistic Social Responsibility Programme to be produced by the project proponent before SEIAA with the following specific conditions:

"1.Fencing should be provided all around the lease area. The steep cut faces of the old workings should be further demarcated and fenced to be left as danger zone.
2. Over burden must be stored in the designated places and provided with protective support walls. The 20 m wide strip of depressed land with thick soil cover may be used for this purpose. Storage of OB in the elevated part as planned may be avoided.
3. Part of the drainage from the quarry is currently directed to the old pit that acts as RWH structure. However, over flow is not provided. It may do in the form of a lined drain, draining to the north. The water from the RWH structure should be let out only after clarification/desilation for which a suitable structure is essential at the outlet.
4. The main haulage road formed in the quarry must be maintained in motorable condition. The approach road to the quarry from the main road is not maintained at all. This road should also be maintained in good motorable condition by the proponent.
5. To the extent possible local biodiversity management committee shall be involved in the environmental management/ restoration activities.
6. Reclamation and eco-restoration should be done by planting native species."

55. In the mean time, it appears that many complaints have been received by SEIAA including the complaint of the appellant wherein he has stated:

"lateral support to his property has lost. Land slide can occur. Threat due to blasting. Adjacent quarries shut down pursuant to a High Court order dated 23.6.2011, but this one continues. There is injunction of Munsiff's Court, Kolenchery against removal of earth. Dumped quarry waste blocking right of way. Three writ petitions are pending. Contaminated quarry wastes polluting paddy fields, streams and irrigation canal"

The said complaint of the appellant has been reiterated further stating that *"the mining land is assigned for agriculture. Conversion not possible. Does not have buffer distance of 50 M from his building. Suit with injunction on removal of earth pending. Another suit*

for removal of dumped O.B pending. SEAC did not consider his objection. He may be heard."

56. The SEIAA in its 44th meeting on 13.11.2015 while analysing the recommendation of SEAC of its 46th meeting dated 29/30.9.2015 regarding the grant of EC to the 5th respondent has decided to conduct inspection by itself after giving notice to the complainant and enquire genuineness of the matter of complaints. Accordingly a spot inspection was conducted by the Chairman of SEIAA along with the Administrator SEIAA on 8.1.2016 and the Report of the Field Inspection is as follows:

> "In pursuance of the decision of the 44th meeting of SEIAA held on 13.11.2015 the Chairman together with Administrator SEIAA visited the quarry site of M/s.Mariyem Industries, at Pazhukkamattom, Thiruvaniyoor, Piravam on 08.01.2016. The permit quarry was stated in 2008, in the own land of Sri Saji K.Elias, in about 10.00 acres (3.997 ha). Permit is for 2 acres only which has been fenced of. A small construction with cement blocks and G.I.sheet roofing is seen at about 17 meters away from the South East boundary of the land owned by the proponent. It is informed that this construction (which is incomplete) started only a week ago. On 05.01.2016 Thiruvaniyoor Grama Panchayat issued a stop memo and sought for explanation of Sri V.A.Bhaskaran, the owner of that land. There are 4 neighbouring private properties, belonging to 4 different persons including Sri Bhaskaran.
>
> The proposed mining area is having a total length of 144.3 m (N) Breath 27 m; 67 m (E) and 76 (m); Total 176 m. Between the existing mining area and adjacent rubber plantation, distance in 75 m. That area belongs to the proponent. Beyond the boundary and towards the west, it is rubber plantation. Though the permit is for 2 acres, E.C. has been applied for 3.997 ha. No further mining taken up, except in the S.E. side of the existing pit.
>
> The on-going construction in Sri Bhaskaran's plot is approximately 400 F2 with two room and a verandah which can be seen from the mining area. 7 ½ m buffer distance is kept from the boundary. Office of the quarry is the nearest structure. It is at about 150 m from the proposed mining area. Proponent said that the construction in Sri Bhaskaran's plot was not there when the Village officer sent a report on 04.12.2015 and the Advocate Commission engaged by the Hon'ble High Court visited the site on 14.12.2015.
>
> It is seen that the construction is new and on-going. There is no power connection or availability of water. It is also seen that the boundaries are well marked with boards depicting coordinates. There are no other structures nearby.

The existing quarry pit is more than 10 m filled with the distance should be minimised to 10m only with soil or over burden."

57. In the mean time, in a writ petition filed by the 5th respondent before the High Court of Kerala in W.P.(C).No.37121 of 2015 he has moved an application for the appointment of an Advocate-Commissioner to inspect the premises and submit a factual report and the High Court has appointed an Advocate Commissioner who has submitted a Report dated 14.12.2015. In the said Report in respect of the existence of any residential building in the property of the 5th and 6th respondents therein, out of whom the 5th respondent is the appellant herein, the learned Advocate Commissioner has clearly stated that there is no residential building in the property of the appellant except that the appellant has stacked hollow bricks and little sand in his property and dug a foundation pit and kept certain granite stones. He has further reported that there is no well in the property of the appellant. The learned Advocate Commissioner has also stated that as requested by the appellant he has taken a rough measurement of distance between the appellant's property and the quarrying place of the 5th respondent. The Report also has states that the distance from the quarry of the 5th respondent to Ernakulam-Piravom State Highway is approximately 360 M and Anganwadi is situated approximately 360 M from the 5th respondent's quarry. The Church viz., Pazhukkamattom Church is situated opposite to the Anganwadi and that is also approximately 330 M away from the quarrying site. He has also found small stream flowing and is situated at least 430 M away from the quarrying site. He has also filed sketch along with his Report which are all marked as Annexure R5Q by the learned counsel appearing for the 5th respondent in the typed set of papers. After the filing of the said Report, the High Court has disposed of the writ petition W.P.(C).37121 of 2015 on 22.12.2015 with a direction to SEIAA to verify the Report with the following direction:

"It is to be noted that the recommendation is subject to condition. Therefore, if the petitioner has complied with all the condition, certainly, the petitioner would be entitled for deemed clearance. However, whether the petitioner has complied with all the conditions or not has to be verified. Therefore, this Court is of the view that the first respondent shall verify whether the petitioner has complied with all the conditions and take a decision within two weeks from the date of receipt of a copy of this judgment. Needless to state, while taking a decision, the objection

of the party respondent shall also be adverted to and also the Commission report filed before this Court by the Advocate Commissioner.''

58. The 48th meeting of SEIAA held on 23.1.2016 has considered its own Site Inspection Report along with the Report of the Advocate Commissioner as directed by the High Court and also the representation of the complainants including the appellant and arrived at a conclusion that EC should be granted to the 5th respondent, subject to the reclamation of mine pit upto 10 M depth, as suggested in the Site Inspection Report and accordingly granted EC for the project of the 5th respondent, subject to specific conditions in addition to general conditions stipulated for mining project and with a direction that PCB shall issue 'consent' only after the conditions are fulfilled. That apart, it was decided by the 1st respondent-SEIAA that the clearance is subject to the effective implementation of all undertakings given by the 5th respondent in the application apart from the mitigation measures. The impugned EC has also referred to various writ petitions filed by the parties, including the order of the High Court dated 8.4.2016 directing issue of EC forthwith to the 5th respondent and hear the appellant thereafter. The EC also states that the same is subject to the result of the litigation pending before the High Court of Kerala and other courts in respect of the functioning of the quarry in question.

59. When the validity of the above EC dated 13.4.2016 is challenged in the present appeal, this Tribunal, in the order dated 15.7.2016 directed the 5th respondent not to continue the quarrying operation till the next date of hearing. The 5th respondent has not proceeded with quarrying as on date as it is submitted by the learned counsel. As it was represented by the learned counsel appearing for the 5th respondent that by virtue of the interim order, even reclamation of mine pit to 10 M depth was unable to be carried out and he has also submitted that an approach road is to be made for the purpose of carrying out the reclamation as well as transportation, the Tribunal has directed the District Collector and the Geologist viz., respondents 3 and 4 to make a Joint Inspection, after giving notice to both the parties and also give a Report on the requirement of reclamation and formation of internal road and any other requirement for carrying out the other conditions imposed in the EC. We have also clarified in the order dated 29.7.2016 that the direction was only to the 5th respondent not to carry out

quarrying work and we have not stated anything about the removal of already mined materials.

60. As per the direction, the 3rd and 4th respondents have filed their Joint Inspection Report dated 23.8.2016 based on an inspection conducted in the presence of the son of the appellant Mr. Muraleedharan, 5th respondent and the Report states as follows:

> "In the inspection we found the mining pit already in a partially filled up condition. The mining pit which is having an approximate area of one acre need to be filled up to 10 meter depth to satisfy the EC condition. We found in an initial estimate that there is sufficient red earth in the property to fill up the mine pit to 10 metre depth. However, in order to ascertain the quantity of red earth required to fill up the mine pit we asked the Taluk Surveyor to quantify the red earth required for filling the mine pit and its availability.
>
> In the inspection we found an over burden rock having an area of approximately 25 lying north of the mining pit. We also found that the plea of the 5th respondent that the over burden has to be removed to fill up the mining pit with red earth and other mining wastes lying adjacent to rock mass very much justifiable. If the rock is not blasted and removed from the area comprised in Resurvey No.302/5 the 5th respondent will not be able to fill up the mining pit with red earth from Survey No.302/5 to satisfy the SEIAA order.
>
> The Taluk Surveyor under directions from the Inspecting Team surveyed the lands and reported that the mine pit having an area of 51.57 ares require 12892 M^3 of red earth to fill it up to 10 meters of depth from ground level. The Taluk Surveyor also reported that 27890 M3 of red earth is available in the proposed site to fill up the mine pit.
>
> FINDINGS AND RECOMMENDATIONS
>
> We find the request of the 5th respondent to blast and remove the rock mass adjoining the existing pit having an approximate quantity of 5000 M^3 in order to fill up the mine pit with ordinary earth just and reasonable and recommend accordingly, provided the 5th respondent obtain necessary sanctions for the same as per law mandates.
>
> The proposed site and quarry is well accessible by an existing road and as such the Inspecting Team do not find any need for an additional internal road.
>
> We make the above observations and recommendations before the Honourable Tribunal for appropriate orders in this regard."

The Report accordingly justifies the claim of the 5th respondent that the over burden has to be removed to fill up the mining pit with the red earth and other mining waste lying adjacent to rock mass and it requires blasting and removal from the area in RS.No.302/5 with red soil to satisfy the order of SEIAA.

61. As the learned counsel appearing for the 5th respondent submitted that the filling has been completed, the Tribunal in its order dated 1.10.2016 has directed the SEIAA to make an inspection and ascertain as to whether filling has been completed and if so in accordance with the scientific method with a direction that during such inspection the SEIAA shall issue notice to the appellant as well as the respondents and shall take photographs and produce the same before the Tribunal. There was also a further direction on 18.10.2016 at the instance of the 1st respondent to request the SEAC to inspect forthwith. It was stated that accordingly a further inspection was carried out but by SEAC on 26.10.2016. As it was noticed that proper notice was not given to the appellant, we directed in our order dated 8.11.2016 the SEAC to conduct another inspection after giving notice to the parties and specifically directing to conduct fresh inspection on 11.11.2016 at 11.00 A.M with a direction to the appellant as well as the 5th respondent to be present on the said date and accordingly SEAC has also filed its Report on 24.11.2016. The relevant portion of the Report of SEAC as per our direction is as follows:

> "The present site inspection started at 11 am on 11.11.2016. Before the commencement of site inspection, discussion was held with both the parties, ie. Appellant and 5th respondent to hear their views. During the discussion the appellant submitted a written note containing 10 points for consideration of the Committee while conducting the inspection. (Note submitted by the counsel is attached). The first four issues deals with identification of survey numbers of the mining pit, survey numbers of the land required to be filled up and survey numbers of the land actually filled. It was made clear by the Committee to the Appellant that a) While approving the mine plan, the District Geologist has already verified the survey numbers of the said land b) The site is identified based on it coordinates as latitude and longitude measured as degree, minutes and seconds to the second decimal with the help of GPS c) The coordinates of all the corners of the quarry lease land are already provided in the approved mine plan d) The SEAC committee during the site visit before sanctioning EC has verified the coordinates provided in the approved mine plan. Now the

coordinate of the centre of the pit will be recorded to check whether the filled part of the pit falls within the land for which EC has been sanctioned. The point 5 – 8 form part of the general conditions of EC which has been complied with. Point 9 and 10 are for taking colour photographs of the filled area and panoramic view as a permanent record which has been admitted The 5th respondent was also heard and he reiterated that he has complied with all the conditions laid in EC.

After the meeting with the Appellant and 5th respondent and hearing them jointly, site inspection was carried out mainly to verify and report whether the specific condition in the Environmental Clearance on the reclamation of the old mine pit to 10 m depth has been duly complied with by the 5th respondent. In this context first the location was ascertained by taking the coordinate of the central part of the pit which reads as Latitude 9^0 55'26.75"; Longitude 76^0'06.93" E which is well within the Coordinates of the boundaries of the quarry as per approved mine plan.

The appellant was of the opinion that the point of measurement, of the depth of pit filling should be from the highest point of the mountainous peak of the quarry lease area, on the boundary. According to him the datum is the peak point on the top of the granite hill.

According to the respondent the datum has already been marked on the ground on the main haulage road with yellow paint by erecting pillars with yellow painted steel pipe during the joint inspection of the Deputy Collector and Geologist with the assistance of Taluk Surveyor. This level was transferred on the walls of the quarry on all the sides marking it with yellow paint. The level so marked demarcates the height from which the depth of the pit is to be limited.

The depth from these markings gives the depth of the pit. Hence measurement were taken by the Committee (in the presence of the Appellant and 5th Respondent) at different points to the filled pit – a) from the datum point on the western side of pit – 8.8 m b) from Yellow marking on the wall on southern side – 6.6 m c) from the yellow marking on the wall on eastern side – 7m.

The committee observe that the earth filling carried out by the applicant/5th respondent within the quarry with reference to the yellow markings on all the sides fall within a height 10 m.

Another point of contention was the area of the pit reclaimed. The report of the joint inspection by Dy Collector and Geologist indicate that the pit area is 5157 sq.m. In the earlier inspection report of SEAC the filled up pit area is mentioned as 75 m x 37 m making it 2775 sq m only. It is to be mentioned that in the SEAC report while mentioning the filled up area has not mentioned the

area covered under RWH and part formed as road. The part of the pit retained as RWH measures 49 m north-south and 37 m east-west covering an area of 1813 sq.m. The road part measures 48 m x 12 making an area of 576 sq.m. On adding these three, the total area of the pit comes to 5167 sq.m nearly equal to the value on the joint inspection.

Photographs were taken by a professional photographer arranged for the purpose. Different views of the quarry, filled pit boundaries, datum point etc. were photographed. They were later copied on to CD and a copy of the CD was given to the Appellant and 5th respondent for reference"

62. It is true that the learned counsel appearing for the appellant has filed objection to the above said reports and we have also referred to the CD. In the light of the elaborate submissions made by the learned counsel appearing for the appellant as well as the 5th respondent based on the same, the above reports were considered by us in detail.

63. The contention raised on behalf of the appellant that there is no proper appraisal, is not acceptable for more than one reason. Not only the SEAC, before the issue of the impugned EC, has conducted inspection but also SEIAA itself, being a regulatory authority, conducted inspection considering the strange instance of enormous complaints being received but also during the pendency of the appeal at the instance of this Tribunal inspections were conducted by the 3rd and 4th respondents, apart from the SEAC independently. In all these inspections, the appellant as well as the 5th respondent have participated.

64. "Appraisal" is defined in Clause 7 of the EIA Notification, 2006 as follows:

IV. Stage (4) - Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. This appraisal shall be made by Expert Appraisal Committee or State Level Expert Appraisal Committee concerned in a transparent manner in a proceeding to which the applicant shall be invited for furnishing necessary clarifications in person or through an authorized representative. On conclusion of this proceeding, the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall make categorical recommendations to the regulatory authority concerned either for grant of prior environmental clearance on stipulated terms and conditions, or rejection of the application for prior environmental clearance, together with reasons for the same.

(ii) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable, any other relevant validated information available and the site visit wherever the same is

considered as necessary by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iii) The appraisal of an application be shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days .The prescribed procedure for appraisal is given in Appendix V ;

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.

65. Therefore, while appraisal is made, it is the duty of the Regulatory Authority to make a detailed scrutiny through EAC or SEAC, as the case may be, in the light of the public consultation if the project falls under 'A' category and in cases where the public consultation process is not required, the appraisal has to be made based on the application in Form – I or I–A as may be applicable or any other information available and site visit. It is only in cases where the appraisal has not been done by the Regulatory Authority or sub committee constituted viz., SEAC or EAC, there will be a scope for the Tribunal to interfere. Appraisal by the Expert Body like SEAC if it is done based on the materials submitted and also with its scientific input, one cannot say that the appraisal must be done in accordance with different view expressed by some other person. On a total analysis of the appraisal done by SEAC in the present case not only before the issuance of the impugned EC but when the appeal was pending before this Tribunal the SEAC again conducted inspection, we have absolutely no hesitation to come to a conclusion that there is no scope to hold that there has not been any proper appraisal.

66. In so far as it relates to the appellant's property is concerned, there are abundant records to show that at the time when the appraisal was made, there was no finished dwelling structure of the appellant at all, even though there has been some structure put up in respect of which doubts have been raised on the basis of the voter's

identify cards and other public documents showing that the appellant and his children are living away. In fact, the learned Advocate Commissioner appointed by the High Court has also stated that at the time of his site visit there was no structure in existence and the documents would show that building permit has been obtained by the appellant only afterwards. Even though this Tribunal is least concerned about the said fact, since it is only concerned about the validity or otherwise of the impugned EC strictly based on the environmental norms, it cannot be denied that when the appellant has come forward with twisted case as if he has been residing in the area and by virtue of the quarrying carried on by the 5th respondent his living will be affected, certainly the Tribunal can take note of the same. It is true that the 5th respondent has made some audio and video visuals to show that the appellant has been bargaining with the 5th respondent to purchase his property for certain price, as stated above, we are not concerned about the same, since the Tribunal is a specialised court to decide only the environmental issues and except taking note of these facts, we do not express any opinion on the same.

67. The learned counsel appearing for the appellant has insisted that there has been a discrepancy between the general conditions 17 and 19 which are elicited as follows:

> "17. Height of benches should not exceed 5 m, and width should not be less than 5 m if there is no mention is the mining plan/specific condition.
>
> 19.Maximum depth of mining from general ground level at site shall not exceed 10m."

According to him the maximum depth of mining from the general ground level at site shall not exceed 10 M and height of benches should not exceed 5 M, is impractical. Apparently the appellant wrongly interpreted that EC permit mining upto a maximum depth of 10 m from the general ground level. The project proponent in the mining plan submitted along with the Form-I proposal which is the basis for appraisal, has indicated elevation of lease area ranging from 45 m to 72 m MSL with height of excavation 30 m to 72 m MSL. After conducting the field inspection by the sub-committee of SEAC on 17.9.2015, appraisal was done in the 46th meeting of the SEAC which reveals that the quarry site exhibits hilly terrain with gentle slope and the elevation is between 40 m to

70 m from North to South direction and the ultimate depth of mine will depend on the possible benches of 5 m width and 5 m height in the lease area. The mining plan submitted by the project proponent along with Form I application also shows that the depth of existing quarry is 45 MSL and the maximum difference between the highest point and the lowest point is about 30 m. The maximum depth to which quarrying is permitted as per the mining plan is also clear from the development plan which is 30 m above MSL. Therefore, the ultimate depth of proposed mining is upto 30 m MSL. The groundwater table in the area is located at about 15 m MSL i.e., about 30 m below ground level from the lowest elevation point in the applied mining area. Condition No.57 of the EC makes it clear that mining operation shall be restricted to above groundwater table and it should not intersect groundwater table. The Conceptual Plan also reveals this fact. The surface plan produced along with the mining plan also shows the level difference between the present working area and the highest point in the plot with the water filled mining pit being at a lower level. As per the EC condition this pit was directed to be filled upto 10 m below the general ground level and the 5th respondent has complied with this condition. It shows a depth of 30 m MSL as the maximum permissible depth to which excavation can be made which is 15 m MSL/groundwater table. The Conceptual Plan and Development Plan with detailed background and cross sections of the existing and proposed mining pits with clear depiction of benches will give no doubt that the permission granted by SEIA takes care of both technical as well as environmental issues and we have no hesitation to come to a conclusion that after considering all these issues in detail the SEAC has recommended the project and the SEIAA granted the EC. Therefore, the apprehension raised by the appellant that if the depth is limited to 10 m how the benches of 5 m width and 5 m height over a period of five years will be carried out, is unfounded.

68. The contention of the learned counsel appearing for the appellant that the 1st respondent has committed illegality in directing reclamation of pit, as a pre-condition, is also not tenable. The 1st respondent had to pass the order as per the direction of the High Court dated 8.4.2016 referred in the order itself and it is not as if by not filling up the pits in an existing quarry which has been abandoned there has been any environmental issue. In fact, the Board has given ‘consent variation order’ on 2.6.2016

which is valid as on date and reclamation of pits has been carried out by the 5th respondent as it has been verified even when the appeal has been pending before this Tribunal. The repeated statements of the appellant that the first respondent has failed to consider the existence of the dwelling house of the appellant is falsified by various documents filed on behalf of the 5th respondent which show that permit from the Panchayat has been obtained much later and on the factual matrix of the case there has not been violation of principles of natural justice, especially when the representations made not only by the appellant but also by many other persons against the quarrying of the 5th respondent have been considered by the Regulatory Authority in detail at every point of time. In view of the same and looking from any angle, we are of the considered view that there are no materials for this Tribunal to interfere with the impugned order of EC granted by the 1st respondent. However, we make it very clear that it shall be the duty of the 5th respondent to follow all the conditions imposed in the EC scrupulously.

68. Accordingly, the appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to cost.

Justice Dr. P. Jyothimani
Judicial Member

P.S. Rao
Expert Member

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