

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

**TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936**

**WP(C).NO. 1060 OF 2015 (F)**  
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**PETITIONER(S):**  
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**VIJAYAN, AGED 48 YEARS,  
S/O.SIVARAMAN ACHARI, CHAMAVILAYIL,  
ERUMAKUZHA, PALAMEL VILLAGE,  
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.M.V.THAMBAN,  
SRI.R.REJI,  
SMT.THARA THAMBAN,  
SRI.B.BIPIN,  
SRI.ARUN BOSE.**

**RESPONDENT(S):**  
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- 1. THE SECRETARY TO GOVERNMENT,  
DEPARTMENT OF INDUSTRIES,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT COLLECTOR ,  
ALAPPUZHA-688 001.**
- 3. THE REVENUE DIVISIONAL OFFICER,  
REVENUE DIVISIONAL OFFICE, CHENGANNUR,  
ALAPPUZHA DISTRICT-689 121.**
- 4. THE TAHSILDAR, TALUK OFFICE,  
MAVELIKKARA, ALAPPUZHA DISTRICT-690 101.**
- 5. THE ADDITIONAL TAHSILDAR,  
MAVELIKKARA, ALAPPUZHA DISTRICT-690 101.**
- 6. THE VILLAGE OFFICER,  
PALAMEL VILLAGE, MAVELIKKARA,  
ALAPPUZHA DISTRICT-690 101.**
- 7. RAGHAVAN PILLAI, AGED 62 YEARS,  
S/O.NARAYAN KURUP, CHAMAVILAYIL,  
ERUMAKUZHI, PALAMEL VILLAGE,  
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT-690 101.**

**WP(C).NO. 1060 OF 2015 (F)**

**8. THE GEOLOGIST,  
DEPARTMENT OF MINING AND GEOLOGY,  
MINI CIVIL STATION, CHERTHALA,  
ALAPPUZHA DISTRICT-688 001.**

**R1 TO R6 & R8 BY SR. GOVT. PLEADER SRI.K.C. VINCENT.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**rs.**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- EXT.P1. TRUE COPY OF THE TAX RECEIPT DATED 21/08/2013 OF THE PETITIONER.
- EXT.P2. TRUE COPY OF THE ALLEGED CONSENT LETTER FRAUDULENTLY OBTAINED AT THE INSTANCE OF THE PETITIONER'S SISTER DATED 03/04/2014.
- EXT.P3. TRUE COPY OF THE LETTER ISSUED BY THE ADDL. TAHSILDAR DATED 17/06/2014 BEARING NO.C8-10526/2014.
- EXT.P4. TRUE COPY OF THE NOC DATED 01/08/2014 BEARING NO.A 2625/2014.
- EXT.P5. TRUE COPY OF THE ORDER PASSED BY THE 8TH RESPONDENT BEARING NO.53/2014-15/MM/OE/DOA/1552/14 DATED 11/08/2014.
- EXT.P6. TRUE COPY OF THE APPEAL BEARING NO.2014/40795/4 DATED 01/09/2014.
- EXT.P7. TRUE COPY OF THE STAY PETITION BEARING NO.2014/40797/4 DATED 01/09/2014.
- EXT.P8. TRUE COPY OF THE JUDGMENT DATED 05/09/2014 IN WP(C).NO. 23744/2014.
- EXT.P9. TRUE COPY OF THE ORDER NO.C2-39935/2014 DATED 05/01/2015 OF THE 2ND RESPONDENT.
- EXT.P10. TRUE COPY OF THE APPEAL FILED BEFORE THE 1ST RESPONDENT.
- EXT.P10(A). TRUE COPY OF THE STAY PETITION FILED BY THE PETITIONER.

**RESPONDENT'S EXHIBITS:-**

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

**P.R. RAMACHANDRA MENON, J.**

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**W.P.(C) No.1060 of 2015**  
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**Dated this the 13<sup>th</sup> day of January, 2015**

**JUDGMENT**

The petitioner has approached this Court, challenging Exts.P3,P5 and P9 orders passed by the concerned respondent, whereby the 7<sup>th</sup> respondent has been permitted to remove ordinary earth from his property, which very much adversely affects the rights and interests and the peaceful living of the petitioner in his property, situated nearby.

2. The sequence of events narrated in the writ petition shows that the 7<sup>th</sup> respondent moved the Revenue authorities for granting 'N.O.C.' and to issue a permit to remove ordinary earth from his property for putting up a residential building. After considering Ext.P3 report of the Additional Tahsildar addressed to the Revenue Divisional Officer, the Revenue Divisional Officer issued Ext.P4 'N.O.C.' dated 01.08.2014, enabling the applicant to remove the red earth, subject to the conditions mentioned therein, clearly stipulating that such removal of ordinary earth

shall be only from the place where the building is actually intended to be put up. Ext.P5 is the permit dated 11.08.2014 issued by the concerned Geologist, also stipulating the royalty to be paid in this regard. Being aggrieved of the proceedings, the petitioner moved the District Collector by way of Ext.P6 appeal and rushed to this Court by filing WP(C) No.23744 of 2014, which was disposed of as per Ext.P8 judgment dated 05.09.2014, directing the District Collector to consider and pass appropriate orders on the appeal. It was accordingly, that a merit analysis was done by the District Collector, who passed Ext.P9 order dated 05.01.2015, whereby the appeal was dismissed holding that there was absolutely no merit or bonafides in the contention raised from the part of the petitioner. It was also observed that the petitioner failed to point out, what was the adverse circumstance with regard to the granting of 'N.O.C.'/permit and what could be the possible damage, if at all any, or the prejudice that might be resulted in this regard. There is a further observation in Ext.P9 that, the property belonging to the petitioner herein was not situated adjacent to the property of the 7<sup>th</sup> respondent and that, in between the properties of the

petitioner and that of the 7<sup>th</sup> respondent, there was yet another property belonging to one Mr.Ajayan. The factual position narrated in the concerned orders reveals that the road situated on the side of the property concerned is at a lower level and construction of buildings has been effected in the nearby properties after lowering the level of the property by removing ordinary earth. It was accordingly, that the petitioner was also permitted to do similar exercise and hence that, there is no merit in the contention raised from the part of the petitioner herein.

3. Challenging the above orders, petitioner has moved the 1<sup>st</sup> respondent by filing Ext.P10, which is styled as Second Appeal preferred under Section 49(1)(b) of the Kerala Minor Mineral Concession Rules, 1967. The prayer is to cause the same to be considered and disposed of within a reasonable time.

4. Heard the learned Government Pleader as well.

5. Considering the limited extent of relief intended to be given by this court, it is not necessary to issue notice to the 7<sup>th</sup> respondent for the time being.

In the said circumstances, there will be a direction to the 1<sup>st</sup> respondent to pass appropriate orders on Ext.P10, in accordance

with law, after hearing all concerned, including the petitioner and the 7<sup>th</sup> respondent, as expeditiously as possible.

The petitioner shall produce a copy of this judgment, along with a copy of the writ petition, before the 1<sup>st</sup> respondent, for further steps.

The writ petition is disposed of.

**P.R. RAMACHANDRA MENON,  
JUDGE**

sp