

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No.2559 of 2015 (T)

PETITIONER:

**MUHAMMED RAHIM,SHAHINA COTTAGE,
MUTTAPPALAM,PERUMKUZHI P.O,
CHIRAYANKEEZHU,THIRUVANANTHAPURAM.**

**BY ADVS.SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR**

RESPONDENTS:

- 1. THE SUPERINTENDENT OF POLICE (RURAL),
THIRUVANANTHAPURAM DISTRICT-695 001.**
- 2. THE CIRCLE INSPECTOR OF POLICE,ATTINGAL,
THIRUVANANTHAPURAM DISTRICT-695 101.**
- 3. THE SUB INSPECTOR OF POLICE,CHIRAYINKEEZHU,
THIRUVANANTHAPURAM DISTRICT-695 304.**
- 4. SRI.SHAJI,KUNNUMPURATH VEEDU,
KUNNIKKADA MUDAPURAM P.O,
CHIRAYANKEEZHU,THIRUVANANTHAPURAM DISTRICT-695 304.**
- 5. SRI.KANNAN,KUNCHI VEEDU,ERATTUKALUNKU,
KOONTHALLUR P.O,CHIRAYANKEEZHU,
THIRUVANANTHAPURAM DISTRICT-695 304.**
- 6. SRI.FAIZAL,THENGUVILA VEEDU,
KATTUMURACKAL MUDAPURAM P.O,
CHIRAYANKEEZHU,THIRUVANANTHAPURAM DISTRICT-695 304.**
- 7. SRI.THAHA,DREAM LAND,MUDAPURAM P.O,
CHIRAYANKEEZHU,THIRUVANANTHAPURAM DISTRICT-695 304.**
- 8. SRI.REJI,KALLUVILA VEEDU,MUDAPURAM P.O,
CHIRAYANKEEZHU,THIRUVANANTHAPURAM DISTRICT-695 304.**

**R1 TO R3 BY SENIOR GOVT. PLEADER SRI.C.R.SYAM KUMAR.
R4-R8 BY ADVS.SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA
SRI.SUJAY SANKAR**

WP(C).No.2559 of 2015 (T)

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

pk

WP(C).No.2559 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:

**EXHIBIT-P1: COPY OF THE BUILDING PERMIT ISSUED BY THE KIZHUVILAM
GRAMA PANCHAYATH TO THE PETITIONER ON 23-07-2014.**

**EXHIBIT-P2: COPY OF THE ORDER NO 274/2014-15/3110/DOT/ML/2014
DATED 21-01-2015 ALONG WITH ENGLISH TRANSLATION OF EXT.P2.**

**EXHIBIT-P3: COPY OF THE REPRESENTATION DATED 22-01-2015 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT ALONG WITH
ENGLISH TRANSLATION OF EXT.P3.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

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W.P.(C). No. 2559 of 2015

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Dated this the 11th day of February, 2015

JUDGMENT

A.M.Shaffique, J.

Petitioner has approached this Court seeking for police protection for removing soil from his property situated in Sy.Nos.1908/A-1-4-1 and 1908/A-1-4 of Kizhuvilam Village in Chirayankeezhu Taluk. Petitioner submits that he is in possession of 25 cents of land and had obtained building permit dated 23.07.2014 from the Grama Panchayath, which is produced as Ext.P1. Since the property is in a higher level, he intended to remove red earth from the property. Accordingly he had approached the Geologist, who had passed an order dated 21.01.2015 permitting the petitioner to remove 600 Metric Tonnes of red earth from the said property. The number of vehicles which will be utilised for the said

purpose has been mentioned. Though it is mentioned in the order that petitioner is permitted to remove the red earth from 25 ares of land, petitioner submits that he has only in possession of 25 cents of land and he has no other extent of land.

2. Geologist had permitted the petitioner to remove the red earth on or before 25.01.2014.

3. According to the petitioner, respondents 4 to 8 have obstructed to remove the red earth without any valid reason and therefore, the petitioner had approached police by filing a complaint as Ext.P3, seeking for police protection. Since no action has been taken in the matter, this writ petition is filed.

3. Counter affidavit has filed by respondents 4 to 8 inter alia stating that, people in the locality objected the removal of red earth from the petitioner's property since the removal of red earth will cause environmental impact in the locality. They had objected before the Geologist, in

W.P.(C).No. 2559 of 2015

the matter relating to the grant of permit/licence. Since the permit has already expired on 25.01.2015, petitioner is not entitled to carry on any such removal of red earth from the property. That apart, it is stated that no permission could have been granted to excavate soil from 63 cents of land, when the petitioner was only in possession of 25 cents.

4. It is also stated that the 5th respondent has preferred a writ petition W.P.(C) No.3991 of 2015 challenging the action of Geologist against the renewal of Ext.P2 permit.

5. Facts being so, if respondents 4 to 8 has any objection to renew the permit, it is always open for them to approach the Geologist or obtain appropriate orders in the writ petition filed by the 5th respondent. However, as matter stands now, in the absence of any restrictive order, the petitioner will have the right to remove red earth from his property after obtaining renewal of Ext.P2

W.P.(C).No. 2559 of 2015

permit.

6. Under such circumstances, this writ petition is disposed of as under.

If the petitioner obtains renewal of Ext.P2 permit and there is any obstruction on the side of respondents 4 to 8 or their men, respondents 2 and 3 shall ensure maintenance of law and order in the matter of removal of red earth by the petitioner. However, this order will be subject to any restrictive order that might be passed in the writ petition filed by the 5th respondent, or any other statutory authority.

Sd/-
ASHOK BHUSHAN,
ACTING CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

das