

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 2989 of 2015 (W)

PETITIONER(S):

**V.V.CHACKO, AGED 63 YEARS
S/O.VARGHESE, VELLIKUNEL HOUSE, PAYYANAD P.O.
MANJERI, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR
MALAPPURAM DISTRICT - 676 505.**
- 2. THE REVENUE DIVISIONAL OFFICER
PERINTHALMANNA, MALAPPURAM DISTRICT - 679 322.**
- 3. THE VILLAGE OFFICER
PAYYANAD VILLAGE, MALAPPURAM DISTRICT - 676 122.**
- 4. THE MANJERI MUNICIPALITY
MANJERI, MALAPPURAM DISTRICT, PIN - 676 122
REPRESENTED BY ITS SECRETARY.**

**R1-3 BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE
R4 BY SRI.K.SHIBILI NAHA, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE REPORT OF THE VILLAGE OFFICER, PAYYANAD VILLAGE
DT. 26.8.14 ISSUED TO THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA.**
- P2 - TRUE COPY OF PLA PREPARED BY THE PETITIONER.**
- P3 - TRUE COPY OF THE PERMIT ISSUED IN FAVOUR OF THE PETITIONER BY THE
4TH RESPONDENT DT. 19.12.14.**
- P4 - TRUE COPY OF THE STOP MEMO ISSUED BY THE VILLAGE OFFICER,
PAYYANAD DT. 01.1.15.**
- P5 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER
BEFORE THE RESPONDENTS 1 AND 2 DT. 15.1.15.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

=====

W.P.(C). No. 2989 of 2015

Dated this the 3rd day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i. Issue a writ of certiorari or any other appropriate writ order or direction, calling for the original of Ext.P4 and quash the same.

ii. Issue a writ of mandamus or any other appropriate writ order or direction, directing the 2nd respondent to consider Ext.P5 objection submitted by the petitioner and to withdraw Ext.P4 stop memo issued against the petitioner."

2. The learned counsel for the petitioner points out that, the petitioner, with intent to construct a residential building in the concerned property, had approached the local authority, i.e., the 4th respondent, who considered the application and granted Building Permit. Based on the said permit, the Municipality permitted the petitioner to remove the requisite quantity of 'ordinary earth' from the concerned property by Ext.P3, validity of which was to expire on 26.12.2014. Pursuant to the application preferred by the petitioner, it was extended till 3.1.2015.

3. It was while doing the operation as above, that, intervention was made by the 3rd respondent by issuing Ext.P4 Stop Memo on 1.1.2015, which is stated as per se wrong and unfounded in all respects. Though the petitioner approached the 2nd respondent by filing a representation similar to Ext.P3, the same has not yielded any positive result and hence the writ petition.

4. Heard the learned Government Pleader for the respondents 1 to 3 and the learned Standing Counsel for the 4th respondent.

5. The learned Government Pleader points out that, Ext.P4 was issued by the Village Officer on the basis of instructions given by the RDO, pursuant to a complaint preferred by a nearby resident, as to the adverse consequence resulted because of the excavation being effected by the petitioner. By virtue of the enabling provision under Rule 8(1B) of the KMMC Rules (as amended) and by virtue of the relevant G.O/Circular issued by the Government in this regard, in so far as there is a valid permit granted by the local authority, it is not necessary for the persons like the petitioner to have obtained further NOC/permit for excavating the requisite extent of ordinary earth; but for having

necessary 'P form' to transport it. But if such activity causes any adverse result or consequence to the nearby property, it is of course a matter to be considered by the 2nd respondent.

6. In the said circumstance, there will be a direction to the 2nd respondent to consider and finalize the issue forming the subject matter of Ext.P5, after affording an opportunity of hearing to the petitioner and also to the complainant, if any, pursuant to which Ext.P4 order was issued by the Village Officer. It is open for the respondent Municipality to consider the application for extension of time. Proceedings before the 2nd respondent will not be a bar in this regard. It shall be finalized at the earliest, at any rate, within 'three weeks' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

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