

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 3679 of 2015 (H)

PETITIONER :

**K.KURUVILLA KURIAN, AGED 73 YEARS,
S/O.KURIAN, KUMMAMPUZHA MALAYIL VEETIL,
KODUKULANJI MURI, ALA VILLAGE, CHENGANNUR.**

**BY ADVS.SRI.S.SUBHASH CHAND
SRI.S.JAYAKRISHNAN
SRI.S.PARAMESWARA PRASAD**

RESPONDENT(S):

- 1. THE DIRECTOR OF MINING AND GEOLOGY,
OFFICE OF THE DIRECTOR OF MINING AND GEOLOGY,
THIRUVANANTHAPURAM-695 001.**
- 2. THE DISTRICT COLLECTOR, ALAPPUZHA-688 001.**
- 3. THE REVENUE DIVISIONAL OFFICER,
CHENGANNUR-689 121.**
- 4. THE TAHASILDAR, CHENGANNUR-689 121.**
- 5. THE VILLAGE OFFICER,
ALA VILLAGE, CHENGANNUR-689 121.**
- 6. THE DISTRICT GEOLOGIST, DISTRICT OFFICE,
DEPARTMENT OF MINING AND GEOLOGY,
CHERTHALA, ALAPPUZHA-688 524.**
- 7. K.P.POTHEN, AGED 70 YEARS, KADAKKAL KIZHAKKETHIL,
KODUKULANJI MURI, ALA VILLAGE,
CHENGANNUR, PIN-689 508.**
- 8. K.P.PHILIP, AGED 57 YEARS,
KADAKKAL KIZHAKKETHIL, KODUKULANJI MURI,
ALA VILLAGE, CHENGANNUR, PIN-689 508.**
- 9. K.P.THOMAS, AGED 60 YEARS,
KADAKKAL KIZHAKKETHIL, KODUKULANJI MURI,
ALA VILLAGE, CHENGANNUR, PIN-689 508.**

WP(C).NO.3679/2015

- 10. SUMA SUSAN THOMAS, AGED 55 YEARS,
KADAKKAL KIZHAKKETHIL, KODUKULANJI MURI,
ALA VILLAGE, CHENGANNUR, PIN-689 508.**

R1 TO R6 BY SR GOVERNMENT PLEADER SRI.MUHAMMED SHAFI.M.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE LAND TAX RECEIPT DATED 4/7/2014 ISSUED BY
THE 5TH RESPONDENT
- EXT.P2. TRUE COPY OF THE ORDER NO.A-5056/2009 DATED 15/1/2010 ISSUED
BY THE 3RD RESPONDENT
- EXT.P3. TRUE COPY OF THE JUDGMENT DATED 11/4/2014 IN OS NO.115/2010
OF THE MUNISFF'S COURT, CHENGANNUR.
- EXT.P4. TRUE COPY OF THE ORDER DATED 02/12/2014 IN IA NO.1520/2014 IN
OS NO.403/2014 OF THE MUNISFF'S COURT, CHENGANNUR.
- EXT.P5. TRUE COPY OF THE PERMIT NO.137/2014-15/MM/OE/DOA/3053/14
DATED 31/12/2014 ISSUED BY THE 6TH RESPONDENT
- EXT.P6. TRUE COPY OF THE PHOTOGRAPHS
- EXT.P7. TRUE COPY OF THE REPRESENTATION DATED 17/1/2015 FILED BY
THE PETITIONER BEFORE THE 6TH RESPONDENT.
- EXT.P8. TRUE COPY OF THE REPRESENTATION DATED 22/1/2015 FILED BY
THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 3679 of 2015

Dated this the 5th day of February, 2015

JUDGMENT

Unauthorized excavation of ordinary earth from the property concerned, by respondents 7 to 10 causing damage to the lateral support of the property belonging to the petitioner made him to approach the Munsiff's Court, Chengannur by filing O.S. No. 115/2010 wherein Ext.P3 judgment was passed on 11.04.2014. The operative portion of the same reads as follows:

"In the result, suit is partly decreed. The plaintiff is entitled to the following reliefs:

1. The defendants are restrained by permanent prohibitory injunction from removing soil in the 4 metre width of property below the level of the plaint scheduled item No.1 property.

2. The counter claim is partly decreed.

The counter claim plaintiff is entitled to the following reliefs:

The counter claim defendant/plaintiff is restrained by permanent prohibitory injunction obstructing the counter claim plaintiff/defendant from removing the soil in 4 metre width up to the level of the plaint scheduled item No.1 property.

3. The counter claim defendant/plaintiff

is restrained by permanent prohibitory injunction from trespassing into the counter claim scheduled property.

4. In the facts and circumstances of the case the parties are directed to suffer their costs."

2. In view of the continued exercise detrimental to the rights and interests of the petitioner, the petitioner was constrained to move the Civil Court again, by way of O.S. NO. 403 of 2014, wherein Ext.P4 interim order was passed, granting injunction against the respondents-defendants from pursuing any activity which will adversely affect the lateral support of the property of the petitioner. It is in contravention of said interim order of injunction, that further proceedings are being pursued by the party respondents who are proceeding with excavation on a large scale. Ext.P5 is a copy of the permit dated 31.12.2014 issued by the 6th respondent. In the said permit, the 6th respondent has incorporated a condition to the effect that, it shall be strictly in conformity with Ext.P4 interim order passed by the Civil Court. But the said stipulation has been given a 'go-bye' and massive excavation is going on as revealed from Ext.P6 photographs, which made the petitioner to file Ext.P7

representation before the 6th respondent, who has not chosen to take any action so far. This made the petitioner to approach the 1st respondent by filing Ext.P8 on 22.1.2015. This also has not yielded any positive result and hence the present writ petition.

3. Heard the learned Government Pleader as well.

4. After hearing both the sides, this Court does not find it not necessary to go into the merits of the case or to issue notice to the party respondents for the time being. The matter has necessarily to be looked into by the authorities of the Department of the Mining and Geology, by conducting an immediate spot inspection with notice to the petitioner and respondents 7 to 10. It shall be ensured that necessary remedial measures are taken to see that, no condition imposed by the 6th respondent while granting Ext.P5 permit is violated by the party respondents, nor is there any violation of the interim order of injunction granted by the Civil Court as per Ext.P4. Respondents 1 and 6 are directed to take necessary steps in this regard, with notice to the petitioner and the respondents 7 to 10. The proceedings as above shall be finalized at the earliest, at any rate, within 'one

month' from the date of receipt of a copy of this judgment. All the issues are left open.

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

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

kp/-