

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

W.P.(C).No. 7750 of 2014 (P)

PETITIONER(S):

MATHEW P.P, AGED 50 YEARS,
S/O.PAILO P.C, VADAKUNNEL PULIKKAL HOUSE,
MUTTAMBALAM, KOTTAYAM.

BY ADV. SRI.S.NIDHEESH

RESPONDENT(S):

1. THE DISTRICT COLLECTOR, KOTTAYAM - 686 002.
2. THE VILLAGE OFFICER, PUTHUPALLY, KOTTAYAM-686 011.

BY SENIOR GOVERNMENT PLEADER, SRI. THOMAS JOHN AMBOOKEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

WP(C).No. 7750 of 2014 (P)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE SALE DEED DATED 27/5/2013 IN FAVOUR OF THE PETITIONER.

EXHIBIT P2 TRUE COPY OF THE TAX RECEIPT DATED 26/07/2013.

EXHIBIT P3 TRUE COPY OF THE PERMIT ISSUED BY THE MINING AND GEOLOGY DEPARTMENT DATED 12/02/2014.

EXHIBIT P4 TRUE COPY OF THE SITE PLAN APPROVED BY GEOLOGIST,DISTRICT OFFICE , DEPARTMENT OF OF MINING AND GEOLOGY, KOTTAYAM.

EXHIBIT P5 TRUE COPY OF THE STOP MEMO DATED 21/02/2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

SHAJI P. CHALY, J.

W.P.(C)No.7750 of 2014

Dated this the 4th day of December, 2015

JUDGMENT

This writ petition is filed by the petitioner seeking to quash Ext.P5 order passed by the 2nd Respondent interdicting the petitioner to carry on filling the garden land owned by the petitioner to raise the existing level of the property by using gravel.

2. Brief facts required for the disposal of the case are as follows:

3. Petitioner is the owner of an extent of 10.60 Ares of land lying in Survey No.444/4 of Puthupally Village, evident from Ext.P1 sale deed and Ext.P2 tax receipt. The said property is a garden land and the petitioner has undertaken the work of raising the level of the garden land by bringing gravel from outside. On receipt of certain complaints, 2nd Respondent has immediately issued Ext.P5, directing the petitioner to stop the said development activity. It is thus challenging Ext.P5, this writ petition is filed.

4. Respondents have filed a counter affidavit justifying the stand and also contending that the petitioner could not produce any permit before it, which persuaded the 2nd Respondent to issue Ext.P5 stop memo.

5. Heard learned counsel for the petitioner and the learned Senior Government Pleader.

6. It is the contention of the petitioner that Ext.P3 dated 12.02.2014 is the permit secured by the petitioner to develop the land by filling the same by using gravel brought from outside. Since he had a valid permit, there was no reason for 2nd Respondent to interfere with the activities undertaken by him.

7. When the matter came up for admission before this Court, this Court had granted an order of stay, with a rider that by virtue of that order, the petitioner shall not indulge in filling up of any paddy land. In view of the interim order passed by this Court, there is every likelihood that the work undertaken by the petitioner being complete. Be that as it may, if the petitioner had secured a valid permit to develop the same using gravel and the same was in accordance with law, the 2nd Respondent did not have power to interfere with the

same. On the other hand, if the petitioner has undertaken any illegal activity in the guise of Ext.P3 permit secured by him, there is every power conferred on the 2nd Respondent to interfere with the same.

8. Therefore, this writ petition is disposed of directing the 2nd Respondent not to interfere with the activities undertaken by the petitioner if it was done in accordance with the permit secured by the petitioner and in accordance with law. Needless to say, if any violation is committed by the petitioner, the 2nd Respondent will be at liberty to take suitable action in accordance with law after providing requisite opportunity to the petitioner.

The writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
07.12.2015