

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 13650 of 2009 (A)

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PETITIONER:

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PATTAYIL ABOOBACKER,
AGED 37 YEARS, S/O.VEERAN, PO OLAVATTOOR,
KONDOTTY.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S):

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1. THE GEOLOGIST,MALAPPURAM.
2. THE DISTRICT COLLECTOR,
MALAPPURAM DISTRICT.
3. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA.
4. THE TAHSILDAR, ERANAD TALUK.
5. THE S.I.OF OF POLICE,
KONDOTY POLICE STATION.
6. ABDUL AZIZ, S/O.MAMMADKUTTY,
VADAKKEYIL, PULIKKAL, AROOR.
7. VADAKKEYIL KHADER, S/O.MUHAMMEDKUTTY,
VADAKKEYIL, PULIKKAL, AROOR.

R,R6 & 7 BY ADV. SRI.MANJERI SUNDERRAJ

R,R6 BY ADV. SMT.K.K.PREETHA

R,R4 BY GOVERNMENT PLEADER SRI. REJI JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 13650 of 2009 (A)
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APPENDIX
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PETITIONER(S)' EXHIBITS:
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- EXT. P1:** TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER AND OTHER LOCAL PEOPLE TO THE 2ND RESPONDENT.
- EXT. P2:** TRUE COPY OF THE COMPLAINT GIVEN BY THE PETITIONER AND
OTHER PEOPLE TO THE 3RD RESPONDENT.
- EXT. P3:** TRUE COPY OF THE COMPLAINT GIVEN BY PETITIONER ALONGWITH
OTHER LOCAL PEOPLE BEFORE THE 5TH RESPONDENT.
- EXT. P4:** TRUE COPY OF THE NEWS ITEM APPEARED IN THE MALAYALA
MANORAMA DAILY ON 24.4.2009.

RESPONDENT(S)' EXHIBITS: NIL
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/TRUE COPY/

P.A. TO JUDGE

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SHAJI P. CHALY, J.

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W.P.C.No. 13650 of 2009

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Dated this the 9th day of November, 2015.

JUDGMENT

This writ petition is filed by the petitioner seeking to direct respondents 1 to 5 to stop the unauthorized and illegal excavation of clay/mud from the paddy field comprised in Survey No. BL 7/34/1 of Pulikkal Village and for other related reliefs.

2. Brief facts for the disposal of the writ petition are as follows:

Petitioner is a resident of Kondoty in Pulikkal Village and the grievance highlighted by the petitioner in the writ petition is the indiscriminate excavation of clay from the paddy field creating serious ecological problems in the locality. It is further contended that, respondents 6 and 7 is in possession and ownership of the property comprised in Survey No. BL 7/34/1 of Pulikkal Village having an extent of 2 acres and mud is being excavated by the said respondents indiscriminately from the said property using several JCBs and the same being removed by

using 20 lorries. It is thus contended that, the indiscriminate removal of mud/clay is causing great inconvenience to the petitioner and other nearby residents of the locality. Even though, consequent to the objections raised by the petitioner and others, the activities were stopped by respondents 6 and 7 after some period they resorted to the said illegal activities again, it is contended. It is also contended that to remove mud/clay, respondents had not secured appropriate permits from the statutory authorities.

3. 4th respondent has filed a counter affidavit and contended that, complaint was received from the petitioner, and on receipt of such complaint on 4/5/2009 with the assistance of the 5th respondent and other subordinate staff a spot study was conducted. On inspection it was found that, permit was granted to one P.K. Abdul Azeez, S/o. Moideen Haji, Parayan Kandy House, P.O., Poovattuparamba for mining ordinary clay from 5 cents of land vide permit No. 7/2009-10/OC/DOM/M-1824/2009 dated 8/5/2009. It was also contended that, the said permit was issued by the 1st respondent after obtaining the possession certificate and location map issued by the Village Officer, Pulikkal Village and the location of the spot to be mined is specifically identified in the location map. It was also contended that, on the date of mining there was no valid permit issued to the 6th and 7th respondents. On finding that the

mining was conducted illegally on the basis of the license issued to one P.K. Abdul Azeez, stop memo was immediately issued and a JCB bearing No. KL.10-AB/2053 was seized on mahazar.

4. It is also contended that, on finding that the 7th respondent conducted unauthorized mining of clay in the land in question a fine of Rs. 25,000/- was imposed against the land owner and he was directed to fill up the pit. The permission granted to said Abdul Azeez for mining in the land in question had validity only up to 20/5/2009 and there was no further mining of clay after issuance of the stop memo. The allegation made by the petitioner that the property is coming under the Kerala Conservation of Paddy land and Wetland Act, 2008 is denied by the 4th respondent and further contended that, the property is included in the notification issued by the State Government exempting it from the provisions of the Kerala Conservation of Paddy land and Wetland Act, 2008 evident from Ext. R4(b). It is also contended that, the 4th respondent had taken all possible action as envisaged under the relevant provisions of the Act, to stop the illegal activities of the 6th and 7th respondents.

5. The 6th respondent has filed a counter affidavit admitting the ownership of the property and that they have obtained lawful license from the Mining and Geology Department. It is also

contended that, the petitioner has started creating problems without any rhyme or reason. It is further contended that the petitioner has no manner of right to interfere with the lawful activities carried on by the 6th and 7th respondents and therefore they seek dismissal of the writ petition.

6. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents 1 to 5.

7. Having considered the rival submissions made at the bar and perusing the entire records, I am of the considered opinion that, from the counter affidavit filed by the State Government it is categoric and clear that the 6th and 7th respondents had secured permit to remove ordinary clay from 5 cents of property alone, which was earmarked along with the plan appended to the permit. In the light of the said permit, unauthorized mining operation were being carried on by the 6th and 7th respondents and further that the permit granted to one P.K. Abdul Azeez was misused by the respondents 6 and 7 for carrying on the mining activities. It is also submitted by the learned Government Pleader that, the permit so granted to the said Abdul Azeez has also expired and consequent to the finding of illegal activities on spot inspection by the respondents, appropriate action was initiated to fill up the pit and fine was imposed against the owner of the property as well as the

JCB was seized and consequent actions were initiated. Therefore, on the basis of the counter affidavit, it can be seen that, the permit granted to said Abdul Azeez has expired and in that circumstances either the permit holder or 6th and 7th respondents have no manner of right to proceed with the excavation without any license/permit from the appropriate statutory authorities.

In that view of the matter, this writ petition is disposed of directing respondents 1 to 5 to see that no mining operations are conducted by 6th and 7th respondents in the property in question without obtaining appropriate permits/licenses from the statutory authorities in accordance with law. The writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY,
JUDGE.

/True copy/

P.A. to Judge

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