

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 11317 of 2015 (L)

PETITIONER :

**M.M. ABDUL KAREEM
S/O.LATE MOIDU, AGED 59 YEARS
MANIYATTUKUDI HOUSE, NELLIKUZH P.O.,
KOTHAMANGALAM-VIA., ERNAKULAM DISTRICT**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.P.T.ABHILASH**

RESPONDENT(S) :

- 1. GOVERNMENT OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF MINING & GEOLOGY
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM – 695 001.**
- 2. GEOLOGIST,
MINING & GEOLOGY DEPARTMENT
DISTRICT OFFICE, CIVIL STATION, KAKKANAD
ERNAKULAM, KOCHI-682 030.**
- 3. ADDITIONAL TAHSILDAR,
TALUK OFFICE, KOTHAMANGALAM,
ERNAKULAM DISTRICT, PIN-686 691**
- 4. VILLAGE OFFICER
ERAMALLUR VILLAGE, KOTHAMANGALAM VIA.,
ERNAKULAM DISTRICT, PIN- 686 691**
- 5. MR. M.M.SHAMSUDHEEN
S/O.MUHAMMED, AGED 41 YEARS, MUTHUVASSERY HOUSE
PANICHAYAM, NEDUNGAPRA P.O., PERUMBAVOOR VIA.,
KUNNATHUNADU TALUK OF ERNAKULAM DISTRICT
PIN-683 545.**
- 6. DEPUTY TAHSILDAR
REVENUE RECOVERY, KOTHAMANGALAM
ERNAKULAM DISTRICT, PIN-686691.**

***ADDL. R7 IMPEADED**

***ADDL.R7. K.M.PAREED, AGED 49 YEARS,
S/O.MUHAMMED, RESIDING AT KAMBAKUDI HOUSE
NELLIKKUZH P.O., ERAMALLUR VILLAGE
KOTHAMANGALAM TALUK, ERNAKULAM DISTRICT.
PIN CODE - 686 691.**

***ADDL.R7 IS IMPEADED AS PER ORDER DATED 26.06.2015 IN IA 7826/15.**

**R1 TO R4 & R6 BY ADDL. ADVOCATE GENERAL SRI.K.A.JALEEL
BY GOVT. PLEADER SRI. T.P.SAJID
R7 BY ADV. SRI.PEEYUS A.KOTTAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 - TRUE COPY OF THE DOCUMENT NO.1146/2006 DATED 21.2.2006 OF THE SUB REGISTRY, KOTHAMANGALAM.
- EXT.P2 - TRUE COPY OF THE PERMIT NO.235/10-11/MM/GS/CRPS/DOE/5562/E2/10 DATED 19.1.2011 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3 - TRUE COPY OF THE QUARRYING PERMIT NO.233/11-12/MM/GS/CRPS/DOE/266/E2/12 DATED 6.2.2012 ISSUED BY THE 2ND RESPONDENT.
- EXT.P4 - TRUE COPY OF THE PERMIT NO.188/12-13/MM/GS/CRPS/DOE/360/E2/13 DATED 4.2.2013 ISSUED BY THE 2ND RESPONDENT.
- EXT.P5 - TRUE COPY OF THE COMPLAINT DATED 29.10.2013 FILED BY K.M.PAREED, KAMBAKUDY HOUSE, NELLIKUZH P.O.
- EXT.P5(a) - TRUE COPY OF THE PROCEEDING DATED 4.11.2013 OF THE REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA.
- EXT.P5(b) - TRUE COPY OF THE REPORT DATED 10.12.2013 SUBMITTED BY THE 3RD RESPONDENT.
- EXT.P6 - TRUE COPY OF THE PROCEEDING DATED 2.5.2014 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7 - TRUE COPY OF THE REPRESENTATION DATED 16.5.2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P8 - TRUE COPY OF THE JUDGMENT DATED 19.8.2014 IN WPC.NO.21523/2014 OF THIS HON'BLE COURT.
- EXT.P9 - TRUE COPY OF THE REPRESENTATION DATED 31.10.2014 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P9(a) - TRUE COPY OF THE PROCEEDING DATED 13.11.2014 OF THE ADDITIONAL TAHSILDAR ATTACHED TO THE OFFICE OF THE 3RD RESPONDENT.
- EXT.P10- TRUE COPY OF THE ORDER DATED 1.1.2015 ISSUED BY THE 2ND RESPONDENT.
- EXT.P10(a) - TRUE COPY OF THE PROCEEDING DATED 27.1.2015 OF THE 6TH RESPONDENT.

(Contd...)

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- EXT.P11 - TRUE COPY OF THE OBJECTION/PROTEST DATED 6.2.2015
SUBMITTED BY THE PETITIONER BEFORE THE 6TH RESPONDENT.**
- EXT.P12 - TRUE COPY OF THE PROCEEDING NO.B-830/15 DATED 13.2.2015 OF
THE TAHSILDAR, KOTHAMANGALAM.**
- EXT.P13 - TRUE COPY OF THE PROCEEDING NO.830/15 DATED 25.3.2015 ISSUED
BY THE 3RD RESPONDENT.**
- EXT.P14 - COPY OF THE DEPOSITION OF THE 3RD RESPONDENT DATED
19.3.2015 IN OP NO. 110/2014 BEFORE THE LEARNED KERALA STATE
ELECTION COMMISSION.**
- EXT.P15 - COPY OF THE ORDER DATED 12.5.2015 IN WA NO. 921/2015 OF THIS
HON'BLE COURT.**
- EXT.P16 - COPY OF THE JUDGMENT DATED 9.6.2015 IN WA NO. 921/2015 OF THIS
HON'BLE COURT.**

RESPONDENT(S)' EXHIBITS :

- EXT.R6(A) COPY OF THE NOTICE BEARING NO. C-1/9903/2013 DATED 16.7.2014
ISSUED BY THE ADDITIONAL TAHASILDAR, KOTHAMANGALAM WITH
ENGLISH TRANSLATION.**
- EXT.R6(B) COPY OF THE JUDGMENT DATED 21.3.2014 OF THIS HONOURABLE
COURT IN WP(C) NO. 789/2014 (W).**

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

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Dated this the 26th day of June, 2015

J U D G M E N T

The petitioner, owner of 1.10 Acres of property comprised in Survey No.442/3 of Eramallur Village of Kothamangalam Taluk of Ernakulam District, challenges Ext.P10 order issued against the petitioner and the 5th respondent demanding an amount of Rs.9,60,920/-. The brief allegations as disclosed from Ext.P10 are that, the 5th respondent conducted illegal quarrying in the puramboke land lying adjacent to the petitioner's land.

2. The 5th respondent has not appeared despite notice having been served. The 5th respondent was earlier before this Court against the proceedings initiated, in which by Ext.R6(b) judgment, it was directed that the District Collector shall enquire

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into the matter and pass appropriate orders. Purportedly in compliance with the aforesaid judgment, the Geologist at Ext.P10 had passed the above order demanding the aforesaid sums from both the petitioner and the 5th respondent.

3. Admittedly the petitioner is the owner in possession and enjoyment of the 1.10 Ares of property more fully described herein above. The petitioner also had conceded to the request of the 5th respondent to facilitate the 5th respondent to carry on a quarrying operation in the said property. The 5th respondent is said to have been in possession of the property carrying out the quarrying operations as per valid permits issued, which is produced at Exts.P2, P3 and P4. It is in the meanwhile that the quarrying in the adjacent puramboke land was noticed and proceedings initiated against both the petitioner and the 5th respondent.

4. It is to be specifically noticed that the allegation is

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not as if the 5th respondent had carried on any illegal quarrying in the petitioner's property. The specific allegation on which demand was raised is with respect to the illegal quarrying carried on in the adjacent puramboke land. It is not clear as to how the petitioner was made liable for the above act. Though the petitioner is said to have been supplied with all the documents and enquiry reports, there is nothing in the order to indicate as to how his complaisance/involvement in the matter was found by the Geologist. Though an appellate remedy is provided, on the facts, this Court is of the opinion that there should be more compelling circumstances to proceed against the petitioner herein, who is said to be the owner of a property, in which admittedly the 5th respondent was permitted legally to carry on quarrying operations. The mere permission granted to the 5th respondent to quarry the petitioner's land cannot lead to the petitioner being responsible for the quarrying in the adjacent

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land, which on all probability was done by the 5th respondent.

5. In such circumstance, Ext.P10 would stand set aside as against the petitioner alone. The petitioner shall appear before the Geologist, 2nd respondent herein on 13.07.2015. The petitioner shall be heard and order passed looking into the evidence as to how the petitioner can be made responsible, to satisfy the demands. The revenue recovery proceedings against the petitioner alone shall be kept in abeyance. The Geologist shall consider the matter after affording an opportunity of hearing and pass orders within one month from the date of hearing.

The writ petition is disposed of.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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P.A to Judge.