

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 14955 of 2015 (T)

PETITIONER:

**SAJI EMMANUEL, S/O.P.T.EMMANUEL,
PEMALAYIL HOUSE, ETTUMANOOR,
KOTTAYAM.**

**BY ADVS.SRI.SUBHASH CYRIAC
SMTSHEEBA JOSEPH**

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
ETTUMANOOR POLICE STATION,
ETTUMANOOR, KOTTAYAM - 686631.**
- 2. GEORGEKUTTY, LOCAL SECRETARY,
COMMUNIST PARTY (MARXIST),
MATTATIL HOUSE, KURUMANOOR, KALLAMBARA,
KANAKKARI, KOTTAYAM DIST-686632.**
- 3. NARAYANAN NAIR, MULLASSERI HOUSE,
KURUMANOOR, KALLAMBARA,
KANAKKARI, KOTTAYAM DIST, PIN-686632.**
- 4. SANAL KUMAR, S/O.KUNJAPPAN,
EDAYAMTHADATHIL, -DO-**
- 5. SAJEEVE KUMAR, S/O.KESAVAN,
VADAKKEKARAYIL HOUSE-DO-**
- 6. SIBI BINU, KARADIYIL HOUSE, -DO-**
- 7. JOY, THEKKEDATH HOUSE, -DO-**

**R1 BY SENIOR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R2 TO R7 BY ADVS. SMT.DAISY A.PHILIPOSE
SRI.JAI GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS :

P1:- TRUE COPY OF THE BUILDING PERMIT DATED 23/8/2014.

P2:- TRUE COPY OF THE JUDGMENT IN WPC NO 822/2015 DATED 16/1/2015.

P3:- TRUE COPY OF THE ORDER OF THE SENIOR GEOLOGIST, KOTTAYAM DISTRICT.

P3(A):- A TRUE COPY OF THE ENGLISH TRANSLATION OF EXT P3.

P4:- TRUE COPY OF COMPLAINT FILED BEFORE THE 1ST RESPONDENT.

P4(A):- TRUE ENGLISH TRANSLATION OF EXTP4.

RESPONDENT(S)' EXHIBITS:

EXT. R2(A) : A TRUE COPY OF THE COMPLAINT DATED 23.4.2011 SUBMITTED BY THE LOCAL RESIDENTS BEFORE THE DISTRICT COLLECTOR, WITH ITS TRANSLATION.

EXT. R2(B): A TRUE COPY OF THE LETTER DATED 10.4.2013 SUBMITTED BY THE LOCAL MEMBER OF LEGISLATIVE ASSEMBLY BEFORE THE DISTRICT COLLECTOR, WITH ITS TRANSLATION.

EXT. R3(C) : A TRUE COPY OF THE ORDER DATED 21.5.2015 ISSUED BY THE DISTRICT COLLECTOR, WITH ITS TRANSLATION.

/TRUE COPY/

P.S.TO JUDGE

mbr/

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.P.C.No.14955 of 2015

Dated this the 25th day of June 2015

J U D G M E N T

Shaffique, J

Petitioner has approached this Court seeking police protection. It is inter alia submitted that he intends to construct a building having plinth area of 266.90 Square Meter in a property situated in Sy.No.306/2-1 of Kanakkary village, Meenachil Taluk in Kottayam District in terms of Ext.P1 building permit dated 23/08/2004. According to the petitioner, since ordinary earth has to be removed for the purpose of building construction, he had approached the authorities seeking permission which is granted in terms of Ext.P3 dated 10/04/2015. When he attempted to remove red earth, private respondents 2 to 7 and their men had obstructed removal of the same. Petitioner submitted complaint to the police for providing adequate police

protection. Since no action has been taken in the matter, this writ petition is filed.

2. Counter affidavit is filed by respondents 2 to 7 inter alia stating that after getting Ext.P1 building permit, petitioner had almost demolished an entire hillock. Even according to the petitioner, he is the owner of the land having an extent of 146.7 ares in Sy.Nos.306/2 and 306/2-1 of Kanakkary village. Building permit has been obtained with reference to the property in Sy.No.306/2-1 whereas petitioner had removed more than 2400 metric tonnes of ordinary earth after quarrying a small hillock situated in his property. It is also submitted that based on the complaints given by the people in the locality, District Collector had interfered in the matter and preliminary order has been passed. The matter is pending before the District Collector for final orders in regard to the question as to whether earth could be removed from the property as well.

3. Having regard to the aforesaid factual situation,

we find that the permit granted by the Geologist had already expired. That apart, the issue is pending before the District Collector. If the petitioner wants to obtain appropriate orders with reference to removal of earth for the purpose of construction of the building, he will have to approach the District Collector, appraising the situation and obtain appropriate positive orders.

Under such circumstances, we do not think that this Court will be justified in issuing any order, as prayed for and accordingly the writ petition is dismissed.

(sd/-)

(ASHOK BHUSHAN, CHIEF JUSTICE)

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

